Council of the District of Columbia
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY
MEMORANDUM
1350 Pennsylvania Avenue, NW, Washington, DC 20004

TO:	Nyasha Smith, Secretary of the Council
FROM:	Charles Allen, Chairperson, Committee on the Judiciary and Public Safety CA
RE:	Closing Hearing Record
DATE:	August 20, 2018

Dear Ms. Smith,

Please find attached copies of the Hearing Notice, Agenda and Witness List, and testimony for the Committee on the Judiciary and Public Safety's June 21, 2018, public hearing on B22-0780, the "Intrafamily Offenses and Anti-Stalking Orders Amendment Act of 2018", and PR22-0838, the "District of Columbia Board of Elections Michael Bennett Confirmation Resolution of 2018".

The following witnesses testified at the hearing or submitted written testimony to the Committee:

B22-0780, the "Intrafamily Offenses and Anti-Stalking Orders Amendment Act of 2018"

i. Public Witnesses

1. Jamie Sparano, Staff Attorney, Legal Aid Society of the District of Columbia
2. Jessica Althaus, Public Witness
3. Gretta Gardner, Deputy Director, DC Coalition Against Domestic Violence
4. Tracy Davis, Managing Attorney, Bread for the City
5. Marta Beresin, Director of Public Policy & Legal Services, Break the Cycle
6. Dena Shayne, Equal Justice Works Crime Victims Justice Corps Fellow, Amara Legal Center
7. Kristin Eliason, Co-Director of Legal Programs, Network for Victim Recovery of DC
8. Michelle Tellock, Senior Associate, Hogan Lovells LLP
9. Aubrey Edwards-Luce, Senior Policy Attorney, Children's Law Center
10. Elisabeth Olds, SAVRAA Independent Expert Consultant
11. Jennifer Wesberry, Director of Operations, DC SAFE
12. Lorraine Holmes, Client Advocate, DC Volunteer Lawyers Project
13. George Marcou, Pro Bono Attorney, DC Volunteer Lawyers Project
14. Lorraine Holmes, Client Advocate, DC Volunteer Lawyers Project
15. Muge Kiy, Public Witness
16. Melika Johnson, Public Witness

17. Christina, Public Witness
18. Beatrice, Public Witness
19. Erin Larkin, Associate Director, Domestic Violence & Family Law Program, Ayuda
20. Teresa, Public Witness

ii. Government Witnesses

1. Michelle Garcia, Director, Office of Victim Services and Justice Grants
2. Robert Contee, Assistant Chief Metropolitan Police Department
3. Katya Semyonova, Special Counsel to the Director for Policy, Public Defender Service for the District of Columbia
4. Mina Q. Malik, Deputy Attorney General, Public Safety Division, Office of the Attorney General for the District of Columbia

PR22-0838, the "District of Columbia Board of Elections Michael Bennett Confirmation Resolution of 2018"

i. Public Witnesses

1. Ben Wilson, Public Witness

ii. Nominee

1. Michael Bennett, Nominee

Council of the District of Columbia
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY
NOTICE OF PUBLIC HEARING
1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004

COUNCILMEMBER CHARLES ALLEN, CHAIRPERSON
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY

ANNOUNCES A PUBLIC HEARING ON

BILL 22-0780, THE "INTRAFAMILY OFFENSES AND ANTI-STALKING ORDERS AMENDMENT ACT OF 2018"

AND

PROPOSED RESOLUTION 22-0838, THE "DISTRICT OF COLUMBIA BOARD OF ELECTIONS MICHAEL BENNETT CONFIRMATION RESOLUTION OF 2018"

Thursday, June 21, 2018, 9:30 a.m.
Room 123, John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

On Thursday, June 21, 2018, Councilmember Charles Allen, Chairperson of the Committee on the Judiciary and Public Safety, will hold a public hearing on Bill 22-0780, the "Intrafamily Offenses and Anti-Stalking Orders Amendment Act of 2018", and Proposed Resolution 22-0838, the "District of Columbia Board of Elections Michael Bennett Confirmation Resolution of 2018". The hearing will take place in Room 123 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., at 9:30 a.m.

The stated purpose of Bill 22-0780, the "Intrafamily Offenses and Anti-Stalking Orders Amendment Act of 2018", is to amend Title 16 of the District of Columbia Official Code to make civil protection orders only available to intimate partners, household members, family members, and victims of sexual assault and abuse or sex trafficking; make the inclusion of animal abuse consistent; expand the ability of minors ages 12 to 16 to file civil protection orders; allow the court to extend temporary protection orders in increments up to 28 days for good cause or for a longer period with the consent of the parties; clarify the relief available for firearms and animal protections; modify the duration of civil protection orders; establish a dedicated unit in the Metropolitan Police Department to serve process in civil protection order cases; and create new anti-stalking orders.

The stated purpose of Proposed Resolution 22-0838 is to reappoint Michael Bennett as the Chair of the Board of Elections for a term to end July 7, 2021.
The Committee invites the public to testify or to submit written testimony. Anyone wishing to testify at the hearing should contact the Committee via email at judiciary@dccouncil.us or at (202) 724-7808, and provide their name, telephone number, organizational affiliation, and title (if any), by **close of business Monday, June 18**. Representatives of organizations will be allowed a maximum of five minutes for oral testimony, and individuals will be allowed a maximum of three minutes. Witnesses should bring **twenty double-sided copies** of their written testimony and, if possible, also submit a copy of their testimony electronically in advance to judiciary@dccouncil.us.

For witnesses who are unable to testify at the hearing, written statements will be made part of the official record. Copies of written statements should be submitted to the Committee at judiciary@dccouncil.us. **The record will close at the end of the business day on July 6.**

Council of the District of Columbia
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY
AGENDA & WITNESS LIST
1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004

COUNCILMEMBER CHARLES ALLEN, CHAIRPERSON
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY

ANNOUNCES A PUBLIC HEARING ON

BILL 22-0780, THE "INTRAFAMILY OFFENSES AND ANTI-STALKING ORDERS AMENDMENT ACT OF 2018"

AND

PROPOSED RESOLUTION 22-0838, THE "DISTRICT OF COLUMBIA BOARD OF ELECTIONS MICHAEL BENNETT CONFIRMATION RESOLUTION OF 2018"

Thursday, June 21, 2018, 9:30 a.m.
Room 123, John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

I. CALL TO ORDER

II. OPENING REMARKS

III. WITNESS TESTIMONY

B22-0780, the "Intrafamily Offenses and Anti-Stalking Orders Amendment Act of 2018"

i. Public Witnesses

1. Jamie Sparano, Staff Attorney, Legal Aid Society of the District of Columbia
2. Jessica Althaus, Public Witness
3. Gretta Gardner, Deputy Director, DC Coalition Against Domestic Violence
4. Erin Larkin, Associate Director, Domestic Violence & Family Law Program, Ayuda
5. Tracy Davis, Managing Attorney, Bread for the City

6. Marta Beresin, Director of Public Policy & Legal Services, Break the Cycle
7. Dena Shayne, Equal Justice Works Crime Victims Justice Corps Fellow, Amara Legal Center
8. Kristin Eliason, Co-Director of Legal Programs, Network for Victim Recovery of DC
9. Michelle Tellock, Public Witness
10. Aubrey Edwards-Luce, Senior Policy Attorney, Children's Law Center
11. Elisabeth Olds, SAVRAA Independent Expert Consultant
12. Natalia Otero, Executive Director, DC SAFE
13. Karen Barker Marcou, Executive Director, DC Volunteer Lawyers Project
14. George Marcou, Pro Bono Attorney, DC Volunteer Lawyers Project
15. Lorraine Holmes, Client Advocate, DC Volunteer Lawyers Project
16. Muge Kiy, Public Witness
17. Melika Johnson, Public Witness
18. Christina, Public Witness
19. Teresa, Public Witness

ii. Government Witness

1. Michelle Garcia, Director, Office of Victim Services and Justice Grants
2. Assistant Chief Robert Contee, Metropolitan Police Department
3. Mina Q. Malik, Deputy Attorney General for Public Safety, Office of the Attorney General for the District of Columbia
4. Katya Semyonova, Special Counsel to the Director for Policy, Public Defender Service for the District of Columbia

PR22-00838, the "District of Columbia Board of Elections Michael Bennett Confirmation Resolution of 2018"

i. Public Witnesses

1. Dorothy Brizill, Executive Director, DC Watch
2. Ben Wilson, Public Witness

ii. Nominee

1. Michael Bennett, Nominee

Legal Aid Society
OF THE DISTRICT OF COLUMBIA
MAKING JUSTICE REAL

Testimony of Jamie Sparano
Staff Attorney, Family/Domestic Violence Unit
Legal Aid Society of the District of Columbia

Before the Committee on the Judiciary
Council of the District of Columbia

Public Hearing Regarding:

Bill 22-0780
"The Intrafamily Offenses and Anti-Stalking Orders Amendment Act of 2018"

June 21, 2018

The Legal Aid Society of the District of Columbia submits this testimony in support of Bill 22-0780, "the Intrafamily Offenses and Anti-Stalking Orders Amendment Act of 2018." We represent domestic violence survivors seeking Civil Protection Orders in the District of Columbia. Each year, we serve hundreds of survivors from all eight wards of the city. Since 2015, Legal Aid attorneys have participated in the Legal Advisory Work Group, which convened to review current statutes and propose amendments to the Intrafamily Offenses Act, D.C. Code § 16-1001, et seq. We believe that, if passed, this bill would make important improvements to current law, including preventing abuse of the Civil Protection Order process by landlords against tenants, removing barriers to protection for minors who are sexual assault survivors, and allowing for longer protection orders and extensions, which can provide critical protection for survivors who face long-term safety risks. Our testimony will focus on changes we believe will have an important impact on our client community, and we will highlight the experiences of clients who would have benefitted from these proposed reforms.

THE PROPOSED DEFINITION OF "HOUSEHOLD MEMBER" WOULD PREVENT ABUSES OF THE CIVIL PROTECTION ORDER PROCESS BY LANDLORDS

First, this bill would amend D.C. Code § 16-1001 to define household members, and include them as a category of people eligible to file for Civil Protection Orders. A "household member" is defined as "a person with whom, in the past year, one has shared both a mutual residence and a close relationship rendering application of the statute appropriate." This definition also specifies that "household member" does not include persons related solely by a landlord and tenant relationship.

In addition to our domestic violence practice, Legal Aid attorneys represent tenants facing eviction in the Landlord and Tenant Branch of the D.C. Superior Court. We have been concerned to see landlords abusing the Civil Protection Order process as a means of self-help eviction. Though the Landlord and Tenant Branch already offers landlords an expedient way to evict tenants with initial hearings set in three or four weeks, Civil Protection Orders offer landlords an even faster option. A Temporary Protection Order could potentially order a tenant to vacate the premises that same day.

In one instance, our Housing Unit represented a couple who were trying to prevent being evicted from the room they rented. In the midst of their case in the Landlord and Tenant Branch, their landlord went to the Domestic Violence Unit and filed for a Civil Protection Order. The basis for jurisdiction was tenuous; the landlord lived in a basement unit with a separate entrance, whereas his tenants lived in the house upstairs. Still, he was able to obtain an order which required the couple to vacate the home, an outcome he was unlikely to achieve in his eviction case. It was only through the advocacy of Legal Aid attorneys and an emergency stay from the D.C. Court of Appeals that these clients were allowed back into their home. Unrepresented parties may not have fared so well.

The proposed amendment would ensure that landlords cannot take advantage of the Domestic Violence Unit and circumvent the proper eviction process. This especially benefits unrepresented parties who may not be able to make nuanced arguments about jurisdiction, or file complicated appeals.

THE PROPOSED LAW EXPANDS ACCESS TO THE DOMESTIC VIOLENCE UNIT TO MINORS WHO HAVE BEEN SEXUALLY ASSAULTED

Second, we support the proposed amendment to D.C. Code § 16-1003, which would allow a minor who is at least 12 but less than 16 years of age and alleges a sexual assault or sexual abuse to file a petition for a Civil Protection Order without a parent, guardian or other adult filing on their behalf. The current law requires an adult to file on behalf of the minor in these instances.

One of my clients was just fourteen years old when she was raped by someone who had just moved into her apartment building the day before. She bravely came to court to seek protection, but quickly learned that her grandmother would have to file on her behalf. That client was fortunate to have a loving, supportive family member who would represent her best interests in court. My client felt comfortable confiding in her grandmother before coming to court, but that is not true for all young people. And if her grandmother had different priorities, she would not have gotten the relief she sought.

There are many reasons that a young teen may not want to disclose their sexual assault to a parent or guardian. They may fear that their parent will be angry at them for who they were with and where they were. They may already be victims of abuse at home. They may feel ashamed. They may not want to risk their parents thinking of them or looking at them differently after finding out.

Unfortunately, we do not know how many young people have not come forward because the law requires them to have the assistance of an adult. This amendment would remove an unnecessary barrier for 12- to 15-year-olds who have suffered sexual assault and sexual abuse and desperately need help from the court.

THE BILL ALLOWS FOR TWO-YEAR PROTECTION ORDERS AND LONGER EXTENSIONS OF ORDERS

Finally, the proposed amendments to D.C. Code § 16-1005 would allow Civil Protection Orders to be entered for a period of time not to exceed two years. Currently, the limit is one year. The proposed law also allows judges to extend an existing Civil Protection Order for any period of time deemed appropriate, including a period longer than two years under certain circumstances.

This is an area in which the District of Columbia is far behind other states. Thirty-two states allow Civil Protection Orders to be entered for a period longer than one year.[1] An additional five states have one-year initial protection orders, but allow for longer – sometimes permanent – extensions.[2]

There are many situations in which a one-year order simply is not enough. For example, the abuse may be so egregious that a client will still be fearful in a year's time, or a survivor may need more than a year to secure a safety transfer to an apartment somewhere safe from their abuser.

Many of our clients who seek Civil Protection Orders for their immediate safety may also be involved in highly contested child custody or divorce cases in the Family Court. What we see frequently is that Family Court cases do not resolve within a year, often necessitating an extension of a Civil Protection Order while the litigation is still pending. When a Civil Protection Order expires while a custody or divorce case is still pending, survivors can be put at even greater risk. For example, Civil Protection Orders may include custody provisions for survivors who have children in common with their abusers. These provisions often specify locations for safe exchanges of the children, or other parameters that keep the parties from coming into contact. If a Civil Protection Order expires before the related custody case is resolved, the survivor is put at risk.

A Civil Protection Order may also order one party to vacate a marital home. We have one client whose ongoing divorce case has dragged out for over two years. She already had her Civil Protection Order extended once, and it will soon expire again. As part of the divorce, she will ask the court to divide the marital home. Without the Civil Protection Order, there is nothing to prevent her violent husband from coming back into the home and staying there with her.

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[1] Ala. Code § 30-5-7; Ark. Code Ann. § 9-15-205; Cal. Fam. Code § 6345; Colo. Rev. Stat. 13-14-106; Del. Code Ann. tit. 10, § 1045; Fla. Stat. Ann. § 741.30; Haw. Rev. Stat. § 586-5.5; 750 Ill. Comp. Stat. Ann. § 60/22; Ind. Code Ann. § 34-26-5-9; Ky. Rev. Stat. Ann. § 403.750; La. Rev. Stat. Ann. § 46:2136; Md. Code Ann., Fam. § 4-506; Me. Rev. Stat. Ann. tit. 19, § 4007; Mich. Comp. Laws Serv. § 600.2950; Minn. Stat. Ann. § 518B.01; Miss. Code Ann. § 93-21-15; Mont. Code Ann. § 40-15-204; N.J. Stat. Ann. § 2C:25-29; N.M. Stat. Ann. § 40-13-5; N.Y. Fam. Law § 842; N.D. Cent. Code Ann. § 14-07.1-02; Ohio Rev. Code Ann. § 3113.31; Okla. Stat. Ann. tit. 22, § 60.4; 23 Pa. Cons. Stat. Ann. § 6108; R.I. Gen. Laws Ann. § 8-8.1-3; S.D. Codified Laws § 25-10-5; Tex. Fam. Code Ann. § 85.025; Utah Code Ann. § 78B-7-106; Vt. Stat. Ann. tit. 15, § 1103; Va. Code Ann. § 16.1-279.1; Wash. Rev. Code § 26.50.060; Wis. Stat. Ann. § 813.12.

[2] Ga. Code Ann. § 19-13-4; Idaho Code Ann. § 19-13-4; Kan. Stat. Ann. K§ 60-3107; Mass. Gen. Laws Ann. Ch. 209A, § 3; N.H. Rev. Stat. Ann. § 173-B:5.

Aside from these logistical issues, the mere fact that litigation is ongoing may present a continuing safety risk to a domestic violence survivor. Survivors are already in the greatest danger immediately after separating from an abusive party, and custody and divorce cases force survivors to continue seeing their abusers regularly in a setting where tensions run high. Violence can quickly escalate following court hearings.

A two-year order would alleviate some of these concerns for our clients who are facing long custody and divorce battles after obtaining Civil Protection Orders. Further, allowing the court discretion to extend for longer periods of time would give our clients options for protection until they truly are safe.

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We urge the Committee to support this bill and move it forward as soon as possible. We appreciate the opportunity to testify and would be happy to answer any questions.

My name is Jessica Althaus and I am a domestic violence survivor. I was fortunate enough to be gifted with a lawyer from Legal Aid, and I would like to share my story.

My child's father viciously abused me for years. He punched me, strangled me, scratched me, and even broke a window with my head. I was physically, emotionally, and financially abused. My abuse only got worse when I got pregnant. After my daughter was born, I believed I had two choices: I could either give her up for adoption to save her.... or try and run to save us both.

I ran... I called a domestic abuse hotline, and made a plan to escape. When he was out one day, my family came with a van and we packed up my belongings, and I escaped.

I stayed safe for two years until my abuser found me again. He then assaulted me on the very spot where he found me. He eventually left but he gave me the ultimatum that I could do things the easy way (his way), or I could choose to do it the hard way. I chose the hard way, and I went to court to get a Civil Protection Order. Thankfully, it was granted.

I then became entangled in a two-year custody battled which enraged him. The more I fought back to protect my daughter and I, the angrier my abuser became. I could see his anger in court, every time he spoke to the judge.

Fortunately, I had the protection of a restraining order. I could carry on with my life (to the best of my abilities), with the security of knowing that I had law on my side to protect me.

But then, in the middle of my battle, my protection order EXPIRED, and I was subjected to another trial to extend it. My nerves were shattered from having to once again face my abuser in court. I was ripped down by his lawyer during cross-examination as they attempted to block my restraining order extension. My ex desperately wanted me to be in the same room with him at the visiting center. I was humiliated as I had to expose the intimate details of my abuse, just so I could plead my case for one more year of protection.

If only my restraining order had been two years instead of one, if only I had a judge that had the ability to extend protection even further for the safety of my daughter and I, I might still be protected today. I imagine how my life might be different. I think about it almost every day.

When restraining orders expire, and victims are left unprotected... they are forced to flee. They leave their homes, their families, their support networks, their schools. They leave their careers and they leave the city they love.

Please don't punish the bravery of the survivors, the few that found the courage to stand up. These victims are at the height of endangerment, when they find the strength to break free of their abusers. There is nothing more deadly than the bruised ego of an abuser.

To this day, I still carry my old protection order. It is just a piece of paper now. All of its power to protect me and my child has expired. I still look over my shoulder in my neighborhood, because there is no threat of legal repercussions to stop my ex from coming to my home. My heart still skips a beat when I come home at night. My family has installed a surveillance camera

in front of the house, and we have extra bolts on all the doors. But legally he is allowed at any time to knock on my door, or walk up to me on the street.

I know that my case is closed, but I would do anything to feel the comfort and empowerment of having a protection order again. I hope that sharing my story will help propel these reforms.

These reforms will grant other brave survivors a chance to not be so afraid. An extension of time to be protected so they can find their footing, and grow strong again. Or the added protection that we need to have a chance at living a normal life one day.

You see abusers don't respect their victims, but they do respect the consequences that come with breaking the law.

Thank you for your time, and giving me an opportunity to address the Council.

DCCoalition
Against Domestic Violence

Council of the District of Columbia

Committee on Judiciary and Public Safety

Councilmember Charles Allen, Chairperson

Public Hearing on

The "Intrafamily Offenses and Anti-Stalking Orders Amendment Act of 2018"

B22-0780

June 21, 2018

Testimony of:

Gretta Gardner, JD
Deputy Director
DC Coalition Against Domestic Violence
5 Thomas Circle, NW
Washington, DC 20005
Tel. 202-299-1181
www.dccadv.org

Good afternoon Chairperson Allen, Members of the Committee, and staff. My name is Gretta Gardner and I am the Deputy Director for the DC Coalition Against Domestic Violence (DCCADV, the Coalition)[1]. The Coalition is a membership organization that provides training and technical assistance, conducts outreach and education, and advocates for policies to end domestic violence in the District. Our member programs provide housing, counseling, support and legal services for domestic violence survivors. Today, you will hear a number of people testify on the specifics of the amendments that have been introduced in the Intrafamily Offenses Act (IFO) and Anti-Stalking Orders Amendment Act. My testimony will focus on the process of how the language of this bill was developed, the inclusion of sex trafficking victims to petition the court for a civil protection order, the establishment of a dedicated MPD Unit for serving protection orders, and the creation of Anti-Stalking Orders.

In September 2015, DCCADV convened the Legal Advisory Work (LAW) Group to review the current IFO and determine its applicability to today's needs. The LAW Group is made up of legal service providers in the DV Unit of DC Superior Court, local law professors of domestic violence clinics, and non-attorney advocates who also work in the DV Unit. Since its inception, this group of direct service providers has worked collaboratively and by consensus, to review the current statute in comparison to current day realities. In an effort to bring those two contrasting elements into alignment, the LAW Group drafted amendatory language to the IFO. It is our hope that when B22-0780 is passed, it will marshal resources more effectively and efficiently to survivors who seek safety and protection from the court. In August 2017, the LAW Group shared the IFO amendment language with our partners who have the responsibility of implementing the IFO—the Metropolitan Police Department (MPD), the US Attorney's Office (USAO), the Court, and Public Defender Service (PDS)—to determine how potential changes to the IFO would impact their work and capacity. We received critical feedback and adjusted our proposed language accordingly. I share this to illustrate the collaborative spirit we engaged in and

[1] DCCADV is the federally-recognized statewide coalition of domestic violence programs, organizations, and individuals dedicated to the elimination of domestic violence in the District of Columbia.

our due diligence to vet the amendatory language with those who work most closely with survivors and the courts on a daily basis.

One of the changes in the amendments that I would like to highlight is subchapter **16-1003 (a)(3)**- allowing a victim who has been forced by another individual to perform a "commercial sex act"—for which anything of value is given to, promised to, or received by any person—to be allowed to receive a CPO. According to the Criminal Justice Coordinating Council report of 2016, most of the human trafficking cases in the District involve sex trafficking, where victims are lured by their traffickers through various methods, including social media, and are coerced into the commercial sex industry. In some cases, victims responded to ads to work for massage parlors, but instead they were coerced into performing sexual acts in addition to or in lieu of providing massage services. Traffickers may solicit prospective "buyers" through residential brothels, on the streets, in strip clubs, or advertising online through websites.[2] The protections available to trafficking survivors are limited, and after conferring with our partners who work with trafficking survivors and find this to be a meaningful remedy, we firmly support this change.

Service of Temporary Protection Orders (TPO) and Civil Protection Orders (CPO) is critical to the process of gaining protection from an abusive person in one's life. Without service, the physical and emotional efforts that are required of domestic violence and sexual assault survivors, who are often *pro se* and unfamiliar with the process, to seek safety through the court system is all for naught. Over the past several years, we have seen varying resources from MPD dedicated to serving protection orders. At different points in 2015 and in 2016, there were no officers assigned to the CPO Unit. In other years, there have been as many as seven or eight officers in the unit serving TPOs and CPOs. Meanwhile, the number of orders that the court grants has increased each year since the creation of the DV Unit.[3] In

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[2] Robinson, C. (2018, February). *An Analysis of Human Trafficking in the District of Columbia 2016.*Retrieved from https://www.cjcc.dc.gov.

[3] There were 5,973 CPOs were filed in 2017, which were almost 400 more CPOs than were filed in 2016.

contrast, the Paternity Unit within MPD has consistently maintained four officers in that unit over the years because that staffing pattern is mandated by law. We appreciate the panoply of resources that exist to make TPOs and CPOs available for survivors, however consistency and reliability need to be statutorily mandated to ensure continued protection for survivors.

Shifting our focus to the creation of an **Anti-Stalking Order**, it is important to know that, in practice, there has been an increase in the number of CPO cases in the DV Unit where the petitioner and respondent are only connected to each other through a "partner in common." The relationship dynamics (or lack thereof) of these cases are not in congruence with the intent of the DV Unit of the court. Without having a partner in common, most of the petitioners and respondents do not know each other or have a previous relationship. This makes the content of the cases very different from an intimate partner violence case or sexual assault perpetrated by a family member or other known individual. When a court's docket has cases without the same or similar dynamics, the weight of managing these varying dynamics can fatigue the judges hearing these cases. With the creation of the Anti-Stalking Order, to be heard in the Civil Division, protection continues to be available to these individuals when an offender is a "partner in common."

There are a few fixes we would like to see in the bill as it relates to the Anti-Stalking Order. The definition of a criminal stalking offense requires that the offender engage in a course of conduct that is 2 or more "stalking occasions." We opine that only one of the stalking occasions has to occur in the 90 days prior to filing a petition for an Anti-Stalking Order.

- 16-1062(a) A person may file a complaint for an anti-stalking order and a request for an interim anti-stalking order in the Civil Division against another person who <u>has allegedly stalked that person, with at least one occasion of the course of conduct occurring</u> within 90 days prior to the date of filing~~, has allegedly stalked that person~~. A minor's parent, guardian, or custodian, or other appropriate adult may file a complaint for an anti-stalking

order on the minor's behalf. A minor who is 16 years of age or older may file a complaint for an anti-stalking order on the minor's own behalf.

Additionally, in an effort to mirror the CPO statute, we are recommending that the Anti-Stalking Order language include reference to the "totality of circumstances" which allows the Court to take the full mosaic of stalking behavior into account when determining which remedies are deemed appropriate to provide a petitioner.

- 16-1063(b) If, after a hearing, the judicial officer finds by a preponderance of the evidence that ~~within 90 days prior to the complaint being filed,~~ the defendant stalked the plaintiff and at least one occasion of the course of conduct occurred within the 90 days prior to filing, or after receiving the parties' consent, a judicial officer may issue a final anti-stalking order. In determining the appropriate remedies for the order, the Court shall consider the totality of the circumstances surrounding the allegations. Appropriate remedies may include: (remedies remain the same).

Lastly, in order for there to be an enforcement mechanism for Anti-Stalking Orders, we again see it as a best practice to mirror the CPO process and make a violation of the Anti-Stalking Order a misdemeanor offense. Without this option, the violation process mirrors Temporary Restraining Orders (TRO) which are very difficult to enforce.

- §16-1063(h) Violation of any interim or final order issued under this subchapter is punishable as a criminal offense. Upon conviction, the offense will be punished by a fine of not more than the amount set forth in § 22-3571.01 or imprisonment for not more than 180 days, or both.

Chairman Allen and members of the Committee, I thank you for your time and welcome any questions you may have.

Testimony of Tracy J. Davis
Bread for the City

Council of the District of Columbia

Public Hearing Regarding:
Bill 22-0780
"The Intrafamily Offenses and Anti-Stalking Orders Amendment Act of 2018"

June 21, 2018, 9:30 a.m.

Good morning. My name is Tracy Davis. I am a Managing Attorney at Bread for the City, a nonprofit direct service organization in Washington, D.C.[1] Thank you for the opportunity to provide testimony today. Each year at Bread for the City, we serve over 30,000 DC residents living with low-income. I supervise a project within our legal clinic that provides legal advice and representation to survivors of domestic violence in family law, civil protection order ("CPO"), public benefits, immigration, and ID matters. Since 2015, I have co-chaired the Legal Advisory Working Group organized by the D.C. Coalition Against Domestic Violence ("DCCADV") to draft amendments to the Intrafamily Offenses Act, D.C. Code § 16-1001, et seq. The content of this bill represents the dedicated work of representatives from approximately eight domestic violence service providers, four area law schools, and the Office of the Attorney General. The Working Group worked tirelessly to ensure that every provision and edit included in this bill was agreed to by consensus. Bread for the City submits this testimony in strong support of Bill 22-0780, which we believe will greatly improve access to justice for survivors of intimate partner violence, sexual assault, and stalking and greatly increase the efficiency of DC Superior Court's Domestic Violence Unit. My testimony will focus on three aspects of these proposed amendments that we believe will improve access to justice and safety for our client populations.

1. <u>The increase in the length of Temporary Protection Order extensions for up to 28 days for good cause will increase safety and access to justice.</u>

This bill will amend D.C. Code §16-1004 to allow for the court to extend temporary protection orders ("TPOs") in 14-day increments; or increments up to 28 days for good cause; or for a longer period of time with the consent of both parties. It is the second element of this provision that is new to the Intrafamily Offenses Act. Currently, TPOs cannot exceed 14 days unless the parties consent to a longer extension. We have proposed this amendment for two main reasons: (1) repeated court hearings every 14 days when the petitioner has not yet served a respondent can be unnecessary and burdensome for the court and petitioner; and (2) respondents will sometimes refuse to consent to extensions for longer than 14 days in an effort to control the petitioner and court process.

[1] The mission of Bread for the City is to help Washington, DC residents living with low income to develop their power to determine the future of their own communities. We provide food, clothing, medical care, and legal and social services to reduce the burden of poverty. We seek justice through community organizing and public advocacy. We work to uproot racism, a major cause of poverty. We are committed to treating our clients with the dignity and respect that all people deserve.

We recognize that the *ex parte* issuance of TPOs is an unusual and extraordinary court proceeding that is granted by the court in these rare circumstances due to the unique safety concerns present. When a survivor in unable to serve the respondent within 14 days, they return to court and either decide to dismiss the case or ask for an extension of the TPO and a continuance for more time to serve the respondent. Accomplishing service in these cases is often challenging and can take longer than 14 days. Respondents may not have a confirmed residential or work address, they purposely avoid service, or they may simply not be in town. In these circumstances, the court has no discretion to extend TPOs for longer than 14 days. This amendment will give the court that discretion. When service has not been effectuated, the extension of TPOs for up to 28 days places little to no additional burden on respondents because the TPO is not enforceable until it has been served. The court itself will benefit from this amendment because they will be able to schedule fewer hearings that unnecessarily clog the court's docket.

When survivors are forced to return to court every 14 days, it means taking time off from work, missing classes, arranging and paying for additional childcare, and paying for additional transportation to and from court. Many of our clients work low-wage jobs that provide little flexibility for taking paid leave.[2] For these clients, coming to court often means missing a work shift and therefore not getting paid. I have had clients miss multiple days of work or school just to appear in court for a short hearing to get a TPO extension and continuance. As attorneys, we can ask that the court waive our clients' presence, but *pro se* parties cannot proceed with their case if they do not appear for scheduled hearings. This amendment would give the court the discretion to extend TPOs for up to 28 days for good cause and minimize the occasions in which survivors have to choose between their safety and the rest of life's demands.

The amendment also will help the court to address the problems caused when respondents have been served and refuse to consent to an extension beyond 14 days.[3] Unfortunately, many of us have witnessed or litigated cases where respondents refuse to consent to longer TPO extensions in an effort to control the petitioner and court process. By refusing to consent, respondents force petitioners to make repeated court appearances. Along with the costs burdened by petitioners mentioned previously, these repeated court dates also result in petitioners having to face and interact with their abuser over and over again in court. Such controlling behavior places an unnecessary strain on petitioners and the court's resources and results in many petitioners opting to dismiss their CPOs. And although the court may waive the requirement that petitioners appear when they are represented by counsel, *pro se* petitioners do not have this option and are forced to return every 14 days to see the respondent in court and ask the court for an extension.

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[2] See National Women's Law Center, set up to fail: when low-wage work jeopardizes parents' and children's success, (2016) for an explanation of how low-wage employment lacks flexibility and paid leave. Report also details how the majority of low-wage workers are mothers and those mothers are disproportionately women of color and immigrant women.

[3] These circumstances most often arise when a CPO case is "trailing" a criminal matter so that the litigation of the criminal matter can inform the outcome of the CPO and increase court efficiency. Trailing a criminal case can mean that a CPO case will not reach resolution for anywhere from one to six months, or possibly longer.

2. The removal of "shared residence" and addition of "household member" will prevent landlords from misusing the Civil Protection Order process to evict tenants.

D.C. Code §16-1001 of the current Intrafamily Offenses Act allows individuals to file against someone with whom the individual "shares or has shared a mutual residence." The proposed amendment would remove this category of individuals who can file for a CPO and replace it with "household member." A "household member" is defined as "a person with whom, in the past year, one has shared both a mutual residence and a close relationship rendering application of the statute appropriate." The language of amendment specifically states that this definition does not include "persons related solely by a landlord and tenant relationship."

At Bread for the City, our Housing and Family Law attorneys are concerned about CPO cases filed by landlords against tenants in an effort to end-run the tenant protections provide by D.C. Code. By filing a petition for a CPO, landlords can obtain a TPO with an immediate vacate order. Many tenants enter CPO litigation without legal representation and lack the legal knowledge to make an argument against the landlord's standing to file for a CPO. We have advised clients who were tenants in several of these cases who come to us for assistance usually after the issuance of the TPO when the tenants have already been forced to vacate their homes.

The current statute does not provide the court with much guidance regarding how to interpret "mutual residence." The proposed definition of "household member" will bring the statute back in-line with its original intent of "eliminating domestic and family violence" (Super. Ct. Dom. Violence Unit R. 1.) and help prevent abuse of the process by landlords. The amendment will still provide protection to those petitioners in a close relationship who share a mutual residence and make clear that persons related solely by a landlord and tenant relationship do not meet the definitions of individuals who are eligible to file for a CPO.

3. The removal of "common partners" will lessen the drain on resources intended for survivors of domestic and sexual violence and lighten the burden on the court.

In 2006, the Council amended the Intrafamily Offenses Act to include the "common partner" provision for the first time. At that time, domestic violence service providers testified against the addition of common partners to the category of individuals eligible to file for a Civil Protection Order.[4] These organizations voiced concerns that this addition would drain resources away from survivors of domestic violence, place the safety of survivors in jeopardy, and lead to manipulation of the courts by batterers. We still share these concerns and time has demonstrated that these cases do cause a strain on the court's Domestic Violence Unit and two Domestic Violence Intake Centers.

We believe that common partner cases are ill-placed in the Domestic Violence Unit because they do not exhibit the same types of controlling and abusive behaviors that we see in intimate relationships and they do not require or benefit from the unique training and remedies

[4] See Committee on the Judiciary Committee Report on Bill 16-247, testimony of Larisa Kofman, DC Coalition Against Domestic Violence, on behalf of DCCADV, Women Empowered Against Violence, Break the Cycle, My Sisters Place, Asian Pacific Islander Domestic Violence Resource Project, and DC Rape Crisis Center (2006), 182-185.

provided by the Domestic Violence Unit and Intrafamily Offenses Act. In the Domestic Violence Unit, the court coordinates resources and cases to address the unique challenges presented by intimate partner violence and sexual assault. The Domestic Violence Unit was created with a recognition that domestic violence can spill over into many different branches of the court resulting in a CPO case, a criminal case, a custody case, and/or a child support case, and that the court can function more efficiently and achieve better outcomes if there is a unit that coordinates the administration and adjudication of these cases. The judges receive training on the unique dynamics of these cases so that they can understand how power, control, and violence are used in intimate relationships. When the Unit functions well, the judges share information across these cases, retain relevant facts and knowledge regarding the parties and the history of abuse in their relationship, and are better situated to design remedies that protect survivors and their families. When common partner cases are included in the Domestic Violence Unit it distracts the Unit from accomplishing its goals. Removing common partners from the Intrafamily Offenses Unit will have little negative impact on these litigants as they have other options for pursuing protection such as Temporary Restraining Orders in the Civil Division and the suggested new Anti-Stalking Order, also to be housed in the Civil Division.

Bread for the City supports all of the amendments proposed in this bill and my testimony highlights only a few of the positive suggested changes. We urge the Committee to support this bill and move it forward as soon as possible. We appreciate the opportunity to testify today and welcome any questions.

Testimony before the DC Council
Committee on the Judiciary & Public Safety
Public Hearing on:
Bill 22-0780, The "Intrafamily Offenses and
Anti-Stalking Orders Amendment Act of 2018"
Marta Beresin for Break the Cycle
June 21, 2018

Good morning Chairperson Allen and members of the Committee. My name is Marta Beresin and I am the Director of Legal Services & Public Policy for Break the Cycle, a national nonprofit whose mission is to inspire and support youth to build healthy relationships and a culture without abuse. In the District of Columbia, we provide free, comprehensive legal services to young survivors between the ages 12 and 24 in dating violence, domestic violence, sexual assault, and stalking cases. Break the Cycle also conducts prevention education at DCPS schools and nationwide and organizes youth around issues of healthy relationships and understanding abuse. Finally, Break the Cycle is a national technical assistance provider through the Department of Justice's Office of Violence against Women, establishing and educating grantees on best practices for addressing sexual assault, domestic and dating violence, and stalking in relation to young survivors.

With this unique perspective, I am happy to have the opportunity to testify today in support of the Intrafamily Offenses and Anti-Stalking Orders Amendment Act of 2018 and its impact on youth ages 12-24. I first want to recognize, however, the efforts of the members of the domestic violence advocacy community who over the last three years have worked meticulously to review and restructure the current IFO statute considering the experiences of the clients they serve each day. This workgroup included Break the Cycle's attorneys, who brought the voices of young victims to the table. It also included attorneys from organizations that serve victims from every neighborhood of DC and every age bracket, immigrant victims, LGBTQ victims, and victims from various cultural, religious, and ethnic backgrounds. The group also sought input from MPD, the US Attorney's Office, DC Superior Court judges, and the Public Defender Service. The proposed language before you today is the culmination of this three-year process.

My testimony will address the importance of three provisions to BTC's young clients: 1) the expansion of the rights of minors to file for a civil protection order (CPO) independently; 2) the ability to engage a non-caretaker adult to assist with filling where necessary; and 3) the expansion of the duration of TROs and CPOs. I will also address how we can further break down barriers to protection for young people by investing in outreach and prevention.

<u>Expansion of a minor's right to petition for a CPO independently:</u>
The right to independently pursue protection from dating abuse and sexual assault is critical to a young person's safety and well-being. Nationally, one in three high school students experience physical or sexual violence, or both, that is perpetrated by someone they are dating or going out with.[1] In addition, 16.3% of 14-17-year olds have experienced sexual victimization of some kind

[1] Vagi, K.J., Olsen, E.O.M., Basile, K.C., & Vivolo-Kantor, A. M. (2015). Teen dating violence (physical and sexual) among US high school students: findings from the 2013 National Youth Risk Behavior Survey. JAMA Pediatrics, 169 (5), 474-482.

in the prior year, and 5.3% have experienced sexual assault.[2] In 2015 Break the Cycle assisted the Sexual Assault Victim Rights Task Force with teen focus groups in which 82 teens participated. Most focus group participants said they would not report a sexual assault to a parent due to fear that Child Protective Services, the police, or their parents or guardians would get involved in a detrimental way. Teens want control over their own lives and may hide an assault if the alternative means disappointing a parent, getting into trouble, bringing "problems" home, or bringing what they perceive as shame onto their community or family.[3] Just like all victims, they want to be safe from violence but they also want autonomy in making decisions as to how best to achieve safety. For some, especially those from communities of color, that may mean seeking a CPO but not going to the police.

Currently, a minor 16 years of age or older may file a petition for a CPO on his or her own behalf. This will not change with these amendments. Also, under current law, a minor who is 12 to 15 years of age can file on his or her own behalf against an intimate partner. This right is expanded under these amendments to also allow these younger minors ages 12-15 the right to file for themselves if they allege "sexual assault" or "sexual abuse" by a peer or stranger, i.e., a non-intimate partner. This aspect of the bill can be viewed as a companion piece to the Sexual Assault Victim Rights Amendment Act of 2017 ("SAVRAA"), also pending before the Council. SAVRAA would give the right to an independent, community-based advocate to sexual assault survivors ages 12-17 who have been assaulted by a peer or stranger.[4] These bills together would provide minors ages 12-17 the means to independently file and the much-needed professional support system for those who choose to take this step.

"Other Appropriate Adult":
Although these amendments establish a significant right in minors to control their own safety, the bill also recognizes that under certain circumstances a young person could use the guidance, support and assistance of an interested adult in seeking safety. The amendments ensure that in situations where minors are required to have an adult file a CPO on their behalf (all minors under 12 and minors ages 12-15 who allege an intrafamily offense against a family member or a sexual assault against someone who has a "significant relationship" to the minor)—that the minor has the ability to seek the assistance of a wider range of interested adults, including a parent, guardian, custodian, or "other appropriate adult". The current law is ambiguous on this point. This clarification will ensure that a minor has the option of engaging the assistance of a non-caretaker adult to file on his or her behalf. BTC's work within certain communities, including the LGBTQ youth community, makes clear that there are times when a young person will forego seeking protection if this would require making a parent aware of a relationship that would not be approved. In addition, it is clearly nonsensical to require a minor to obtain the assistance of a caretaker to file a CPO against that same caretaker.

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[2] Sickmund, M., and Puzzanchera, C. (eds)(2014). *Juvenile Offenders and Victims: 2014 National Report.* Pittsburgh, PA: National Center for Juvenile Justice, pg. 37.

[3] Whether they would get into trouble, bring shame on their family, or disappoint a loved one is beside the point-- it is the perception of teens, and perceived consequences are what teens—and all of us – act upon.

[4] Both bills exempt sexual assault/sexual abuse by someone with whom the minor has a "significant relationship" within the meaning of DC Code Section 22-3001(10), defined as a person who is in a position of authority including family members, guardians, coaches, and faith-based education leaders.

TRO and CPO Duration:
Decreasing the number of times a young victim must come to court to obtain protection is also essential to breaking down barriers to assistance. These amendments allow the Court to extend a temporary protection order (TPO) in increments of 28 days rather than the current 14-day limit to allow for service. In addition, the amendments expand the maximum duration of a CPO from one year to two bringing DC in line with a majority of states on CPO duration. Both amendments will decrease the number of times a young victim (and all victims) must come to Court to obtain protection. Every time a young person comes to court they necessarily miss a school day (unless court falls on a vacation day). Court appearances are not an excused absence under DCPS truancy rules. Staying in school after experiencing the trauma of abuse or assault is hard enough without missing additional days for court appearances. In addition, retraumatization can occur with each court hearing since the victim must often recount and thereby relive the experience(s) that have brought them to court. It's remarkable that any minor has the strength to come to court and tell their story to obtain protection. In one recent BTC case, our young client was pregnant and on bed rest and had to return to court every 14 days to renew her TPO because she did not know where the abuser resided. Each hearing date, her BTC attorney had to argue why the petitioner's appearance should be waived and why an extension should be granted. I shudder to think what this young mother would have done if she didn't have counsel, as we know is the case with so many victims.

Outreach and Prevention:
The amendments related to minors and to the length of a TPO or CPO break down barriers youth face to achieving safety. Given the epic proportions of teen dating abuse mentioned above however, much more is needed to reduce these barriers. Young victims have unique legal rights in DC, but rights are meaningless without awareness that a situation is abusive, awareness that there is a process to obtain protection, and awareness of the help resources available. To end dating abuse and sexual violence among young people, DC must support outreach and primary prevention in every DCPS school. Many states, including Virginia, Florida, Georgia, Massachusetts, Nebraska, Ohio, Oregon, and Rhode Island, are leading the way in requiring that schools include consent and healthy relationships education within their sexual education curricula.[5] In DC there is no such requirement and public funding – local or federal—is extremely limited. While the Fair Budget Coalition advocated for funding for prevention education in the fiscal year 2019 budget, none was included. Through corporate grants and some funding from OVSJG and OVW, Break the Cycle conducts outreach and education that reaches nearly 1000 students per year in DC. But much more is needed; comprehensive school-based prevention education should be a part of the curriculum for every DC student.

I urge this Committee to support the IFO amendments and to champion prevention education funds in next year's budget cycle. Chairman Allen—you have been a leader on the Council around the issue of domestic violence. Thank you for championing a strategy to achieve more funding in FY '19 for domestic violence housing. Please use your leadership role to ensure these important amendments to DC's IFO statute become law and to ensure every young person knows they have the right to be free from abuse and violence and can access the resources necessary to be so.

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[5]For a comprehensive list of state dating abuse prevention laws, see: http://www.cpedv.org/blog-post/school-based-dating-abuse-prevention-laws-state

AMARA LEGAL CENTER

STITLE: Intrafamily Offenses and Anti-Stalking Orders Amendment Act of 2018
COMMITTEE: Committee on the Judiciary and Public Safety, Council of the District of Columbia
HEARING DATE: June 21, 2018
POSITION: SUPPORT

Good morning. My name is Dena Shayne and I am the Equal Justice Works Crime Victims Justice Corps Fellow at the Amara Legal Center. Amara provides free legal assistance to survivors of human trafficking and sex workers in the DC metro area. One of the services we provide - and indeed, have found to be in great demand by our clients - is filing for protection orders. However, due to the complicated nature of human trafficking, many of our clients are unable to obtain such orders.

The purpose of a civil or temporary protection order is to provide safety to victims and to better hold perpetrators accountable for their actions. Under the current statute, victims of trafficking face additional hurdles to securing a protection order. The statute allows petitioners who have a romantic or familial relationship with the respondent to file for a protective order against a respondent who allegedly committed or threatened to commit one or more criminal offenses against the petitioner. However, victims of sex trafficking cannot always demonstrate the requisite relationship with their trafficker to obtain a protection order. Some of Amara's clients find it difficult to articulate their relationship with their trafficker, and are at times not romantically involved. Situations like this - where, for example, the trafficker offers physical protection and in return, coerces victims into engaging in commercial sex - are not currently covered under the statute. Thus, this lack of romantic or familial relationship bars sex trafficking victims from obtaining protection orders.

Additionally, victims of sex trafficking often feel vulnerable when requesting help from legal authorities because they are scared they will be criminally charged with prostitution. Criminalizing sex trafficking victims who come asking for protection from their trafficker suggests that these victims do not deserve to be protected from people committing the crime of trafficking human beings. Similarly, individuals otherwise engaged in sex work are hesitant to come forward to seek civil protection orders when they've been victims of crimes like sexual assault or abuse because they are afraid of being charged with prostitution. Individuals engaged in commercial sex should not be forced to give up on a legal remedy because they are afraid of the consequences of seeking protection. Therefore, Amara recommends that, just as respondents receive legal protection from criminal consequences of their statements in domestic violence proceedings, and in proceedings pursuant to this bill, petitioners, whether sex workers or

survivors of sex trafficking, should also receive legal protection. Amara recommends using the following language: "The petitioner's testimony in any trial or hearing under this code section is inadmissible as evidence in a criminal trial or delinquency proceeding except in a prosecution for perjury or false statement."

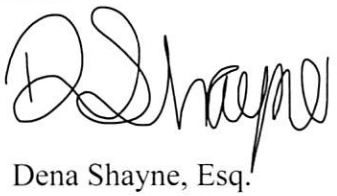
Amara is pleased to note that the growing trend nationally is for law enforcement to recognize sex trafficking and not charge victims with prostitution. We are also pleased that DC law enforcement have a stated desire to support this trend. However, we would be remiss in our duties if we did not bring up our concerns. Protective orders allow victims of sex trafficking to leave untenable situations they were coerced into accepting. Ensuring that trafficking victims have access to protection orders will enable them to better separate from their traffickers in a legal, binding, and safe way.

Additionally, while Amara supports the inclusion of this amendment, we would like to clarify the section regarding minors. The current definition of "sexual abuse" used in the amendment refers to the Anti-Sexual Abuse Act, which does not include sex trafficking in the definition of sexual abuse. Thus, it appears that minors are unable to file for protective orders against persons trafficking them. Amara proposes using the same language added in §16-1003, which adds "used coercion to cause the petitioner to engage in a commercial sex act" as a reason for a minor to obtain a protective order.

Finally, if the Council and community advocates want to assist in ensuring that survivors of sex trafficking are protected and feel supported, the amendment should be as expansive as possible. This includes opening up protective orders to minors on sex trafficking grounds, and making sure that statements made in proceedings showing sex trafficking cannot be later used to support a prostitution conviction. DC would not be alone in ensuring that survivors of sex trafficking were protected under protection orders. States like Alaska, Colorado, Pennsylvania, and Texas, to name a few, all have protection orders on the grounds of sex trafficking, which I will expand on in my written testimony. It is clear that the needs and obstacles that trafficking survivors face are complex and vast. The council has the opportunity now to ensure that we, as a society, can respond to survivor's needs somewhat adequately. Allowing trafficking survivors to receive the appropriate support and protection they deserve - without using it to criminalize them - will enable them to gain economic security, and the ability to build and live their lives in any way they see fit.

AMARA LEGAL CENTER

Sincerely,
Dena Shayne



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Committee on the Judiciary
Public Hearing on Bill 22-0780, the "Intrafamily Offenses and Anti-Stalking Orders Amendment Act of 2018"
Testimony of Kristin Eliason, *NVRDC Co-Director of Legal Programs*

Good morning Chairman Allen, staff, and other members of the Judiciary & Public Safety Committee. My name is Kristin Eliason and I am one of Network for Victim Recovery of DC's (NVRDC) two legal directors. On behalf of our Executive Director, Bridgette Stumpf, I want to thank you for your continued support of crime victims in the District. NVRDC is a holistic services organization that provides crisis intervention, advocacy, case management, and legal services to over 700 victims of crime annually. My co-Director, Matt Ornstein and I oversee NVRDC's legal program which, in FY17 provided legal assistance to over 300 victims of crime hailing from all eight of the District's wards with the majority of our clients being indigent or working poor. More than half of our legal clients are adult survivors of sexual assault, intimate partner violence, and stalking seeking free legal assistance with CPOs.

NVRDC fervently supports the proposed amendments to the Intrafamily Offenses Act (IFOA) and I will be highlighting some of the critical changes NVRDC would like to see to better advocate for our clients, beginning with the modification to allow for the 28-day extension of Temporary Protection Orders (TPOs).

Prior to my time at NVRDC, I served as a Protection Order Attorney with the House of Ruth Maryland where I represented hundreds of clients in protective order proceedings. In Maryland, TPOs can be extended for a period of up to 6 months in order to effectuate service or for good cause. I saw first-hand how this law made a difference in keeping my clients safe and providing them peace of mind during the pendency of the case. Unfortunately, right now, DC petitioners aren't as fortunate and must repeatedly return to court every 14 days when they are unable to effectuate service. This proposed amendment does not strip away respondents' due process rights as opponents would have the Council believe; If the extension of the TPO is for lack of service, then the respondent, who has no notice, can't be prosecuted for any violations. If a petitioner is seeking to extend the TPO for good cause, then the respondent has been served and has notice and opportunity to be heard at the hearing where the extended TPO is being addressed. What's really at stake here are the lives of survivors who quit the CPO process because coming back every 14 days is extremely burdensome.

Additionally, NVRDC supports the proposed creation of Anti-Stalking Orders. NVRDC is known in the legal services community for taking on difficult stalking CPO cases and we see this amendment as an appropriate measure to address ongoing issues in the CPO courts related to certain types of stalking cases. Many of the non-intimate partner stalking cases we are referred are not stranger or acquaintance stalking cases, but rather involve parties who are connected to each other through a common partner. In our view, these cases are not appropriate for the Domestic Violence Unit and we support the transfer of these cases to the Civil Division. NVRDC is often contacted by folks being stalked who were incorrectly advised to file for a Temporary Restraining Order (TRO) in the Civil Division and are then faced with litigating a lengthy civil lawsuit against their stalker. These Anti-Stalking Orders would provide a more appropriate process for the incorrectly filed Temporary Restraining Order stalking cases, lessen the large dockets in the DV Unit, and allow petitioners in those partner-in-common cases to still seek relief similar to that of a CPO.

NVRDC enthusiastically supports lengthening the duration of CPOs and extended CPOs. By allowing courts to issue CPOs up to two years in length, our great District would be joining the vast majority of states that allow for the issuance of CPOs lasting at least two years. For many survivors, one year is simply too short a time to truly provide them the protection they need. NVRDC represented a survivor who came to us after she was raped and kidnapped by her former partner, who is also the father of her young child. NVRDC secured a CPO for the client and, several months later, her assailant was convicted of committing a number of felony crimes

against our client. Although the respondent was sentenced to 10 years of incarceration he continued to try to contact our client, violating the CPO. In order to maintain her CPO against the respondent, our client bravely returned to court for an extension hearing just three months after the respondent was sentenced. As one can imagine, for this survivor, it is a terrifying thought to face her rapist on a yearly basis in a small courtroom to extend her CPO so that she is protected now and when the respondent is released from incarceration. The proposed changes support a more trauma-informed approach to civil justice remedies and provides a more appropriate process for those in need of extended protection that encourages survivor participation.

The need for longer extended CPOs is also underscored by a case I've had for over three and a half years in which my client and his family have been stalked by a woman they barely know. This stalker is convicted in DC, Maryland, and Virginia as a result of crimes committed due to her obsession with my client and his family. When the stalking began, my client and his wife had an unsuccessful foray into the Civil Division's TRO process, but later secured a CPO against the stalker. A year later, I helped them obtain an extended CPO; however, faced with the prospect of agitating the respondent into resuming her stalking, my client elected not to seek a second extension of his CPO a year later.

Unfortunately, without a CPO in place, the respondent resumed stalking my client and his family, this time surveilling his younger daughter's school, resulting in the entire school being locked down for an afternoon followed by an increase in security for several days. As a result, we returned to court to fight for a CPO. I have personally witnessed the toll having to frequently return to court has taken on my client, his wife, and their children. The ability to have his initial CPO issued for two years and the extension issued beyond just one year would not only have protected my client even after the criminal case ended but may have allowed this family some modicum of safety and peace that continues to evade them.

Thank you for your time and commitment to survivors, I'm happy to address any questions you may have.

nvrdc
Network for Victim Recovery of DC

Committee on the Judiciary & Public Safety
Public Hearing on Bill 22-0780, the "Intrafamily Offenses and Anti-Stalking Orders Amendment Act of 2018"
Supplemental Testimony of Kristin Eliason, *NVRDC Co-Director of Legal Programs*

In addition to the written and oral testimony provided to the Committee on June 21, 2018, Kristin Eliason on behalf of NVRDC, Ms. Eliason wishes to supplement her testimony in order to provide further detail, context, and support for the passing of the "Intrafamily Offenses and Anti-Stalking Orders Amendment Act of 2018." In addition to her support of the proposed Amendments emphasized by Kristin Eliason in her June 21, 2018 testimony, this supplemental testimony will address: (1) the increase in the length of Temporary Protection Orders (TPOs) from 14 days to 28 days; (2) clear expectations for the involvement of the DC Metropolitan Police Department (MPD) in the service and enforcement of TPOs and Civil Protection Orders (CPOs); (3) the creation of Anti-Stalking Orders (ASOs) heard in the Civil Division of DC Superior Court; (4) the codification of violations of ASOs as both criminal contempt and misdemeanors; and (5) ASOs and compliance with the funding requirements of the Violence Against Women Act.

1. Length of Temporary Protection Orders (TPOs)

As outlined in the testimony of Kristin Eliason, NVRDC wholeheartedly supports the proposed amendment's allowance for the extension of issued TPOs beyond the current 14-day time limit. Unlike the District, the vast majority of jurisdictions in the United States allow for a TPO to remain in effect longer than 14 days.[1] In fact, 27 states, either explicitly or silently, allow for either an *initial* ex parte TPO to be in effect for a period longer than 14 days or allow for *extensions* of the ex parte TPO to be in effect for a period longer than 14 days.[2] Additionally, many states allow for the extension of a TPO for good cause, for lack

[1] Alaska Stat. Ann. § 18.66.110(a) (West); Ark. Code Ann. § 9-15-206(c) (West); Fla. Stat. Ann. § 741.30(c) (West); Ga. Code Ann. § 19-13-3(c) (West); Haw. Rev. Stat. Ann. § 586-5(a) (West); 750 Ill. Comp. Stat. Ann. 60/220(a); Ind. Code Ann. § 34-26-5-9(e) (West); Kan. Stat. Ann. § 60-3106 (West); La. Stat. Ann. § 46:2135; Me. Rev. Stat. tit. 19-A, § 4006; Md. Code Ann., Fam. Law § 4-505 (West); Mich. Comp. Laws Ann. § 600.2950 (West); Minn. Stat. Ann. § 518B.01 (West); Miss. Code. Ann. § 93-21-15(b) (West); Mont. Code Ann. § 40-15-201 (West); Neb. Rev. Stat. Ann. § 42-925 (West); Nev. Rev. Stat. Ann. § 33.020 (West); N.H. Rev. Stat. Ann. § 173-B:3 and B:4; N.J. Stat. Ann. § 2C:25-28 (West); N.Y. Fam. Ct. Act § 828 (McKinney); Okla. Stat. Ann. tit. 22, § 60.3 (West); Or. Rev. Stat. Ann. § 107.718 (West); 8 R.I. Gen. Laws Ann. § 8-8.1-4 (West); S.D. Codified Laws § 25-10-7; Tex. Fam. Code Ann. § 83.002 (West); Utah Code Ann. § 78B-7-107 (West); Va. Code Ann. § 16.1-253.1 (West).

[2] Florida allows for "any injunction shall be extended if necessary to remain in full force and effect during any period of continuance." Fla. Stat. Ann. § 741.30(c) (West); Hawaii's law states that a "temporary restraining order granted pursuant to this chapter shall remain in effect at the discretion of the court, for a period not to exceed one hundred eighty days from the date the order is granted or until the effective date . . . of a protective order issued by the court, whichever occurs first." Haw. Rev. Stat. Ann. § 586-5(a) (West); Maryland allows a judge to "extend the temporary protective order as needed, but not to exceed 6 months, to effectuate service of the order where necessary to provide protection or for other good cause." Md. Code Ann., Fam. Law § 4-505 (West); Missouri "Not later than fifteen days after the filing of a petition ... a hearing shall be held unless the court deems, for good cause shown, that a continuance should be granted." Mo. Ann. Stat. § 455.040 (West); Rhode Island, "Every order granted without notice shall expire by its terms within the time after entry, not to exceed twenty-one (21) days, as the court fixes, unless within the time so fixed the order: (i) by consent, or (ii) due to a failure to make service of process upon the defendant despite diligent efforts, or (iii) for good cause shown and after hearing of argument by the parties or counsel, is extended for an additional period." 8 R.I. Gen. Laws Ann. § 8-8.1-4 (West); South Dakota, "An ex parte temporary protection order is effective for a period of thirty days ... unless for good cause the court grants a continuance." S.D. Codified

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of service, or at the discretion of the court either *sua sponte* or upon request of the petitioner. There is a heavy burden placed on a petitioner in DC who must return to court every 14 days. On any given day, if an observer were to sit in either of the CPO courtrooms at DC Superior Court, the observer would witness the considerable number of petitioners who have been to court over and over again because they have been unable to effectuate service on an evasive respondent. Additionally, *pro se* petitioners are generally not aware of their options regarding a motion for alternative service or do not have the financial ability to hire a process server who charges in the area of $150 for a total of only three service attempts. This burden may not seem so heavy for those of us who have full-time employment complete with understanding bosses and the ability to put our children in daycare; however, for petitioners who have less-certain employment situations or lack childcare or whose last few dollars are spent on getting to court, one hearing every 14 days can be devastating. NVRDC respectfully asks that the counsel pass this amendment and lessen one of the host of burdens facing survivors of domestic violence and sexual assault in this city.

2. Metropolitan Police Department Involvement

We ask the Council to legislate expectations for and responsibilities of the Metropolitan Police Department (MPD) regarding CPOs to improve accountability and transparency for survivors seeking to be safe from their abusers. Currently, the organizations that provide assistance for CPOs in the District have little to no information about MPD practices. The information that providers may have is also likely to change frequently, as it is most affected by MPD staffing changes and the prioritization of their leadership. While the challenges of agency transitions are understandable, as a service provider that fights for the safety of DC survivors, NVRDC is compelled to advocate for a system that does not expose survivors to further harm due to staffing and training priorities. We ask that the Council legislate certain aspects of MPD involvement in the TPO and CPO process in order to clarify the role and expectations of MPD officers in a way that is not susceptible to change due to staffing priorities. NVRDC's concerns mirror those of other DC providers: 1) MPD currently does not notify petitioners of the outcome of attempted service, 2) MPD's staffing of the unit responsible for serving CPOs varies widely, and 3) the quality and frequency of training to officers seems to vary, with some officers being highly trained and others lacking the basic knowledge required to properly assist a survivor in the event of a CPO violation.[3]

During MPD's testimony, Chairman Allen brought up a critical issue—whether MPD officers notify petitioners about service attempts.[4] Currently, there is no notification to the petitioner when service is attempted or completed. Survivors with attorneys have the advantage that the attorney knows to check with the DV Unit clerks regarding any submissions of the Return of Service by MPD. However, this too has its limitations, for it requires the attorney to constantly check in with the Clerk and may also result in the realization that service was ineffective without enough time to correct or re-attempt service.[5] In contrast, a petitioner without an attorney will not find out whether service was completed until the day of the hearing, resulting in great prejudice to the petitioner. If there is no service by the hearing date, the judge may decide to (1) dismiss the case, or (2) allow the

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Laws § 25-10-7; Texas, "On the request of an applicant or on the court's own motion, a temporary ex parte order may be extended for additional 20-day periods." Tex. Fam. Code Ann. § 83.002 (West); Virginia, "If the respondent fails to appear at this hearing because the respondent was not personally served, or if personally served was incarcerated and not transported to the hearing, the court may extend the protective order for a period not to exceed six months." Va. Code Ann. § 16.1-253.1 (West).

[3] Although Robert Contee, Assistant Chief of the Investigative Services Bureau at MPD, testified that MPD officers notify petitioners after serving a respondent, in NVRDC's experience, this is an extremely rare occurrence, truly an exception to the rule.

[4] For reference, this document will use "service" and "service attempt" to refer to the personal service that must be effectuated on a Respondent within 14 days after a survivor receives a temporary protection order (TPO) from a magistrate judge.

[5] While Connecticut officers frequently notify survivors of service outcomes, this is not required by law. However, Connecticut's system for submitting a Return of Service is much more demanding of the timeliness of the submission. Connecticut requires that officers enter the date, time, and method of service into the judicial branch's internet-based tracking system as soon as possible (but no more than two hours) after attempting service. If the Respondent is not served before the date of the scheduled hearing, the officer must indicate in the system that service was unsuccessful. *See* Connecticut General Assembly, Office of Legislative Research, *Service of Civil Orders of Protection*, https://www.cga.ct.gov/2016/rpt/pdf/2016-R-0332.pdf.

petitioner to try to serve the respondent once more and return after another 14 days.[6] A petitioner that receives notice of ineffective service ahead of time can often try to make another attempt or serve the respondent through alternative means (with judicial permission), thereby avoiding the risk of case dismissal and the escalating risk of danger.

While notification to petitioners would facilitate many logistical and procedural aspects of the CPO process, the most important consideration is the impact on survivor safety. Because a CPO is not enforceable until it has been served, quick service is critical. Every extra minute can create serious danger of continued or escalated violence. Without knowing the status of service attempts, petitioners and their attorneys cannot know whether the petitioner is officially protected by a TPO. Any violence that occurs before service cannot be the subject of a contempt motion or prosecution. As a result, the respondent cannot be held accountable, resulting in a period where the petitioner is particularly vulnerable to retaliation.

Others states, like Washington, require the type of notification NVRDC recommends for the District. Washington even goes so far as to require officers to notify petitioners if service cannot be completed within 10 days of the order.[7] Based this legislation, we believe that requiring MPD to make good-faith attempts to notify petitioners of attempted or completed service of process would be a reasonable and achievable addition to the IFOA.

NVRDC's second request is that the Council maintain the bill's current language requiring a minimum of six (6) MPD officers to serve in a special unit, whose exclusive purpose is to serve civil process in any case filed under the IFOA.[8] While there was testimony that this unit currently staffs eight (8) MPD officers, this number has fluctuated over time, and at one point—dropped to zero (0). While we understand that staffing is a result of complex decisions that are not always within MPD's control, a dedicated team of MPD officers is critical to effectuate service. As we, and many other service providers have stressed, any delay in service can result in escalated violence or loss of life of District residents. This risk is too great to leave to the fluctuating nature of staffing decisions, or to a possible shift in agency politics that does not prioritize these particular types of victimizations. For this reason, we ask that the Council maintain the minimum number of MPD officers who should staff the special unit.

Finally, we ask that the Council mandate training for MPD officers on CPOs. While we are aware of a training module that officers receive at the MPD academy, we ask that the Council legislate a training requirement on CPOs for all officers both at the academy and on a biannual basis. Our experience, and that of other service providers, demonstrates that the knowledge of CPO varies widely within MPD. The consequence of varying degrees of officer experience means that petitioners will face inconsistent outcomes when they attempt to use the court's mechanisms for protection. An officer who does not know how to properly fill out a proof of service form could cost a survivor the dismissal of their case. An officer who is unfamiliar with CPO enforcement and refuses to investigate a violation can rob a survivor of their faith in the CPO process. The reality is that even with thorough training of the unit handling CPOs, they are not the only officers interacting with petitioners involved in the CPO process. Officers not assigned to the special unit are sometimes called upon to serve court papers, and any officer could respond to a 911 call reporting a violation—therefore, all officers should have basic knowledge of CPOs.

Due to frequent changes in CPO-related law, we recommend that the Council mandate biannual training for all MPD officers on CPOs. As reflected in other states' law, training is not only necessary for new officers,

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[6] In NVRDC's experience, this is not a theoretical possibility; petitioners, particularly those who are *pro se*, do have cases dismissed due to lack of service, or are discouraged when they hear the case cannot go forward if service does not occur. In addition, each morning of court, several CPO cases are called and dismissed because the petitioner has not appeared. It is unknown how frequently this problem results from barriers related to service.

[7] Revised Code of Washington, 26.50.130 7(b).

[8] Intrafamily Offenses and Anti-Stalking Orders Amendment Act of 2018, Bill 22-0780, §16-1007(e).

but for officers that have served for longer periods and may not be familiar with recent changes to CPO law. For example, an officer trained at the MPD Academy 10 years ago would not know that the standard distance of separation for a CPO is 100 yards, rather than the old standard (100 feet). That difference is knowledge could result in an officer arresting a respondent for a violation, or letting them walk away and potentially continuing to cause harm to the survivor. For this reason, we recommend that the Council look to states, like New Jersey,[9] which requires entry-level training and annual training on domestic violence, which includes trainings on protection orders.[10] Illinois also requires similar training for new recruits, as well as requiring training on domestic violence every 5 years for continuing education.[11] Similar to Illinois law, we would also recommend that any law enforcement training be formulated, in part, through consultations with community organizations with expertise in domestic violence, including organizations that provide direct legal services.[12] Oftentimes, systemic barriers to survivor safety may be more noticeable to service providers that encounter these barriers on a frequent basis. As a result, it would be helpful to hear identified problems, and solutions, from a different perspective.

NVRDC greatly respects and appreciates the great service MPD provides to the DC community. Our recommendations are not a critique of individual officers, but a desire for more transparency and accountability, so as to facilitate a coordinated approach to providing survivors with a safer DC.

3. Creation of the ASO Process

As stated in Ms. Eliason's testimony on June 21, 2018, NVRDC supports the addition of new Chapter 10A to the Intrafamily Offenses Act, creating ASOs. As a free legal services provider in the District, NVRDC frequently receives requests for assistance with stalking/harassment-based Temporary Restraining Order (TRO) cases filed in the Civil Division of DC Superior Court. Harassment is no longer a crime in DC but is essentially enveloped into DC's criminal stalking statute. Unfortunately, many persons being harassed in the District, do not know about this nuance and when they seek injunctive relief from the court, are directed to the Civil Division to file a civil lawsuit that, as part of its early injunctive relief, allow the plaintiff to request a temporary restraining order. These TRO cases are often filed by District residents who are being harassed by a neighbor; however, NVRDC also receives requests from persons whose stalking cases are classified as "harassment" and are turned away from the DV Unit and sent to the Civil Division. NVRDC has also received requests for TRO assistance from transwomen subjected to hate speech and threats directed at them by someone in their neighborhood; while this directed course of conduct may qualify as stalking, those clients were directed to the Civil Division, not the DV Unit. Unfortunately, due to a variety of issues, from lack of awareness on the stalking survivor's part to unintentional misdirection by court personnel, people who live, work, or go to school in the District that need injunctive relief against their stalkers, do not end up in CPO court. Instead they end up filing costly civil lawsuits[13] that not only require an initial filing fee but also often require fees when filing motions, pleadings, and other documents throughout the pendency of the case's litigation.

Moving stalking cases in which the parties are not intimate partners, household members, or family members from the DV Unit to the Civil Division does not downplay these types of cases or minimize the experiences of stalking victims—o n the contrary, this process would lessen the significant stress and frustration that these other stalking survivors are subjected to every time they are told they cannot file in the DV Unit.[14]

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[9] New Jersey requires officers to attend an initial training on domestic violence within 90 days of appointment or transfer and an annual training of at least four hours. The training consists of statutory and case law concerning domestic violence, and the necessary elements of a protection order. New Jersey Revised Statutes § 2C:25-20.

[10] While Maryland does not require it by law, the Model Domestic Violence Policy for the Maryland Law Enforcement Community requires similar training for entry-level and in-service officers.

[11] Illinois Domestic Violence Act, 750 ILCS 60, Article III Section 301.1.

[12] Illinois Domestic Violence Act, 750 ILCS 60, Article III Section 301.1.

[13] Plaintiffs can move to have the filing costs waived if they are indigent.

[14] NVRDC addresses concerns about VAWA funding in relation to Anti-Stalking Orders further below.

4. Violation of an ASO

NVRDC supports making the violation of any temporary or final ASO punishable as criminal contempt and a criminal misdemeanor. NVRDC proposes the following language:

> Violation of any temporary or final order issued under this subchapter, or defendant's failure to appear as required by subsection (a) of this section, is punishable as criminal contempt. Upon conviction, criminal contempt will be punished by a fine of not more than the amount set forth in § 22-3571.01 or imprisonment for not more than 180 days, or both.
>
> Any person who violates any temporary or final Anti-Stalking Order issued under this subchapter, will be guilty of an offense and upon conviction punished by a fine of not more than the amount set forth in § 22-3571.01 or by imprisonment for not more than 180 days, or both.

In order to ensure the safety of stalking survivors, violation of an Anti-Stalking Order must be chargeable as a misdemeanor.[15] Criminal contempt as it stands in common law is not sufficient.

First, currently in cases of CPO violation, the most appropriate relief for the protected stalking survivor to seek is criminal contempt, not civil contempt, because the contemptuous conduct was an instantaneous, affirmative violation.[16] As a result, the purpose of the contempt proceedings in such cases is to punish past conduct, not to coerce compliance.

Second, including misdemeanor contempt language will ensure that survivors with an ASO can turn to law enforcement for help if the order is violated. In our experience, MPD does not enforce civil court orders, even if a violation of a civil court order constitutes common law criminal contempt. We have learned from clients who are protected by a Temporary Restraining Order or a Permanent Injunction from the Civil Division that when an opposing party violates a civil order and our clients call the police, the clients are told that MPD is unable to do anything about the matter and the clients should file something with the Court. This leaves our clients at risk and disillusioned, particularly when the violation occurs in the middle of the night or on a weekend when the Court is closed. Relatedly, a party protected by a general civil order, cannot make a police report due to its violation. A party must file a Motion to Adjudicate Criminal Contempt in the Civil Division and wait for a hearing date in order to obtain relief. In contrast, a party protected by a CPO can file a Motion to Adjudicate Criminal Contempt, but can also file a police report documenting the violation. Making a violation of an ASO a criminal misdemeanor will ensure that MPD can enforce the order on the ground.

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[15] We will use the term "common law criminal contempt" to refer to the enforcement mechanism available at common law and under D.C. Code §§ 11-944 (addressing contempt committed in the presence of the court) and 16-1005(f), the term "misdemeanor contempt" to refer to the type of enforcement mechanism currently available under D.C. Code § 16-1005(g), and the term "criminal contempt" to refer to the legal concept in general.

[16] "The characterization of a contempt proceeding as 'civil' or 'criminal' depends on the purpose of the sanctions sought." Joan Meier, *The "Right" to a Disinterested Prosecutor of Criminal Contempt: Unpacking Public and Private Interests*, 70 Wash. U. L. Rev. 85, 86 n.6 (1992). Contempt is of a "civil" nature when it primarily serves a remedial purpose for the benefit of the complainant. *Gompers v. Bucks Stove & Range Co.*, 221 U.S. 418, 441 (1911); *In re Dixon*, 853 A.2d 708, 711 (D.C. 2004). "Judicial sanctions in civil contempt proceedings may, in a proper case, be employed for either or both of two purposes: to coerce the defendant into compliance with the court's order, and to compensate the complainant for losses sustained." *United States v. United Mine Workers*, 330 U.S. 258, 303-04 (1947) (citations omitted). Contempt is of a "criminal" nature when it is "intended to punish the contemnor and to vindicate the authority of the court." *Loewinger v. Stokes*, 977 A.2d 901, 916 (D.C. 2009). "The same acts may justify a court in resorting to coercive and to punitive measures." *United States v. United Mine Workers*, 330 U.S. 258, 299 (1947). However, the best practice is to try the two issues separately, so as to "avoid obscuring the [alleged contemnor's] privileges." *Id.* at 299-300.

Third, including misdemeanor contempt language, and ensuring it is possible for a protected party to file a police report for a violation, will help survivors trigger a criminal contempt prosecution by the USAO or OAG. Unlike some other jurisdictions, in the District of Columbia, an individual party cannot prosecute criminal contempt against an opposing party regardless of whether the proceedings involve common law criminal contempt or misdemeanor contempt.[17] In the District of Columbia, a protected party must rely on the USAO and OAG to prosecute violations of a court order for criminal contempt.[18] In CPO matters, the USAO and OAG learn of violations through a police report or a Motion to Adjudicate Criminal Contempt. NVRDC knows from experience that in Divisions of the court where the violation of an order is not designated as a misdemeanor, the USAO and the OAG are sometimes never notified after a Motion to Adjudicate Criminal Contempt is filed. Furthermore, the USAO has been transparent that it is more likely to move forward on a case if the office receives notice of a violation of a court order through a police report as opposed to a Motion to Adjudicate Criminal Contempt.[19]

Finally, including misdemeanor contempt language in this legislation will maintain the status quo and ensure consistency between the CPO and ASO frameworks. Currently, survivors of stalking can obtain CPOs in the Domestic Violence Division.[20] A violation of a CPO is prosecutable both through proceedings of common law criminal contempt and misdemeanor contempt.[21] NVRDC believes it is appropriate to create a system of ASOs to remove non-IPV stalking cases from the Domestic Violence Division. However, if the ASO code is not consistent with the Intrafamily Offenses Act on this point, then the Council would be effectively taking protections away from stalking survivors.

At the same time, the availability of misdemeanor contempt will not prejudice parties who violate orders. In most instances, a violating party will face the same potential sentence whether the proceedings are for common law criminal contempt or misdemeanor criminal contempt.[22] In fact, our proposed language will benefit alleged contemnors. If the ASO statute is silent on the issue of contempt, common law and general statute will control, and a violating party may face fines *greater* than the amount set forth in § 22-3571.01 or imprisonment for *more* than 180 days, or both, so long as the violating party is afforded a jury trial.[23]

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[17] *See, e.g., Wanke, Indus., Commercial, Residential, Inc. v. Superior Court*, 209 Cal. App. 4th 1151, 1168 (2012), *as modified on denial of reh'g* (Oct. 29, 2012) (California court applying double jeopardy to acquittal in criminal contempt matter prosecuted by private party).

[18] The "participation of a disinterested prosecutor is essential to the delivery of justice." *In re Taylor*, 73 A.3d 85, 106 (D.C. 2013). The private beneficiary of an order may not prosecute a criminal contempt hearing. *Id.* at 97 (*citing Jackson*, 51 A.3d at 540). While a trial judge may initiate and preside over a criminal contempt proceeding, a judge may not prosecute a criminal contempt proceeding. *Id.* (*citing Jackson*, 51 A.3d at 531). Technically, if the USAO and OAG decline to prosecute an instance of criminal contempt, criminal contempt proceedings may be prosecuted by private attorneys appointed by the court for that purpose. *Id.* (*citing Jackson*, 51 A.3d at 539); *Peak*, 759 A.2d at 617 (*citing Young*, 481 U.S. at 793). However, in our experience, there is no panel of attorneys organized for this purpose, and even if there were, there is no budget to pay them. The Court must rely on attorneys offering to prosecute the matter *pro bono*, and this organization has only heard of one instance of this occurring over the past six or seven years.

[19] As previously stated, in our experience, MPD will not take a police report for criminal contempt of a civil order outside of the CPO context.

[20] D.C. Code § 16-1001(12).

[21] D.C. Code § 16-1005(f), (g).

[22] Alleged criminal contemnors are entitled to many of the same due process rights as defendants in criminal cases. "[C]riminal contempt is a crime in the ordinary sense; it is a violation of the law, a public wrong which is punishable by fine or imprisonment or both." *Thompson v. United States*, 571 A.2d 192, 194 (D.C. 1990) (*citing Bloom v. Illinois*, 391 U.S. 194, 201 (1968)); *accord Young*, 481 U.S. at 799-800. "Convictions for criminal contempt are indistinguishable from ordinary criminal convictions, for their impact on the individual defendant is the same." *Id.* (*citing Bloom*, 391 U.S. at 201). For example, under D.C. Code § 16-1005(f) and (g), for common law criminal contempt or misdemeanor contempt, a violating party may face punishment by a fine of not more than the amount set forth in [§ 22-3571.01] or by imprisonment for not more than 180 days, or both.

[23] D.C. Code § 16-705(b)(1)(A) (affords alleged criminal contemnors the right to a jury trial where they are facing the penalty of confinement in excess of 180 days); *In re Richardson*, 759 A.2d 649 (D.C. 2000) (holding alleged criminal contemnors have a Sixth Amendment right to a jury trial when facing penalties for a serious offense, to be determined by using D.C. Code § 16-705).

Including misdemeanor contempt language will ensure and that stalking survivors have the same protection they currently have under the Intrafamily Offenses Act, and can turn to law enforcement and prosecutors when they need help.

5. VAWA Compliance for ASOs

There was some testimony provided at the June 21, 2018, hearing that raised concerns about the effect the ASO amendment would have on funding received under the Violence Against Women Act ("VAWA") which provides significant funding to state, tribal, and local governments including the District. The purpose of VAWA is to encourage these government entities to approach domestic violence, dating violence, sexual assault, and stalking as serious violations of criminal law, and to assist those governments in developing and strengthening their systemic responses to these crimes.[24] At the June 21, 2018 hearing, Michelle Garcia, Director of the District of Columbia Office of Victim Services and Justice Grants ("OVSJG"), testified that OVSJG administers $1.2 million in VAWA formula funds annually. In order to continue receiving this funding, there are some important components of the District's existing CPO procedures that need to be mirrored when the ASO legislation is implemented.

Specifically, the District must make efforts to ensure that cost is not a barrier to any survivor seeking protection from the courts. VAWA requires a government entity receiving VAWA funds to certify "that its laws, policies, and practices do not require . . . in connection with the filing, issuance, registration, modification, enforcement, dismissal, withdrawal or service of a protection order, or a petition for a protection order, to protect a survivor of domestic violence, dating violence, sexual assault, or stalking, that the survivor bear the costs associated [with the activity, e.g., filing]."[25] Accordingly, the District must allow survivors of stalking to file complaints and other documents in an ASO proceeding at no cost.[26] In addition, the Metropolitan Police Department must serve temporary and final ASOs on defendants at no cost.[27] As a practical matter, these procedures should not result in any significant change, as stalking survivors currently have access to these types of systems at no cost through the CPO process.

In addition to federal statute, as of 2017, many states have their own laws explicitly guaranteeing that stalking survivors have access to certain protective functions of the justice system at no cost, such as filing papers in a protection order case and having a protection order served; these states include: Colorado, Georgia, Hawaii, Missouri, New Mexico, Tennessee, and Virginia.[28] Currently, the District's Intrafamily Offenses Act, codified at D.C. Code §§ 16-1001 - 16-1006, does not explicitly provide for these financial considerations; however, as implemented, stalking survivors may file in a CPO case and have the CPO paperwork served by MPD at no cost. It is critical that stalking survivors have access to the courts, and ensuring there is no court-cost-related barrier will help make sure the justice system is a realistic option for survivors during traumatic times.

6. Definition of Intimate Partner and Intrafamily Offense

NVRDC has a logistical correction regarding the definition of "intimate partner." On June 21, 2018, Michelle Garcia, Director of OVSJG, raised concerns regarding potential unintended consequences resulting from the wording of the term "intimate partner". NVRDC proposes the following language:

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[24] 34 U.S.C. §§ 10441(a), 10461(a) (2013).
[25] 34 U.S.C. § 10450(a)(1).
[26] *See* 34 U.S.C. § 10450(a)(1).
[27] *See id.*
[28] National Center on Protection Orders and Full Faith & Credit, Battered Women's Justice Project, "State Protection Order Statutes: Prohibiting Fees for Filing, Issuance, Registration, Modification, Enforcement, Dismissal, Withdrawal or Service of Process for a Protection Order or Petition for a Protection Order," Revised 2017 (July 2, 2018, 3:06 PM), http://www.bwjp.org/assets/documents/pdfs/state_protection_order_statutes.pdf.

> "Intimate partner" means a person to whom one is or was married; with whom one is or was in a domestic partnership; with whom one has a child in common; or with whom one is or was in a romantic, dating, or sexual relationship. For purposes of this chapter, "intimate partner" also includes a person who (1) has pursued such a relationship with the person filing or (2) claims such a relationship exists or existed with the person filing."

This change in language requires a change to the definition of Intrafamily Offense in order to avoid confusion and unintended meaning. NVRDC proposes the following language:

> "Intrafamily offense" means:
>
> (A) An act punishable as a criminal offense committed or threatened to be committed by an intimate partner, a household member, or a family member; or
>
> (B) An act punishable as cruelty to animals as defined in sections 1 and 2 of Chapter 106 of the Acts of the Legislative Assembly, approved August 23, 1871 (D.C. Official Code §§ 22-1001 and 22-1002), committed or threatened to be committed by a person against an animal that belongs to or is in the household of an intimate partner or family member."[29]

NVRDC thanks the Council for its time and commitment to survivors of crime in the District. Should members of the Council have questions regarding NVRDC's testimony, please reach out to Bridgette Stumpf, Executive Director, at bridgette@nvrdc.org.

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[29] Striking: "a person against".

B22-0780, the "Intrafamily Offenses and Anti-Stalking Orders Amendment Act of 2018"

Good morning, Chairman Allen and Members of the Committee. My name is Michelle Tellock, and I am a Senior Associate with the international law firm Hogan Lovells, which is co-headquartered here in DC. We are proud of our long-standing commitment to providing pro bono legal services to people who need it most. Locally, our attorneys regularly partner with organizations including the DC Volunteer Lawyers Project (DCVLP), the Network for Victim Recovery of DC (NVRDC), and Legal Counsel for the Elderly to represent individual clients seeking civil protective orders. In the last year alone, we have represented approximately twenty (20) clients referred to us by DCVLP. In addition, my colleague Kelsey Moran and I have provided legal research support to the Legal Advisory Work (LAW) Group convened by the DC Coalition Against Domestic Violence (DCCAVD).

Most of our research has focused on surveying other jurisdictions' approaches to issues addressed by this bill, including both conceptual approaches and the details of statutory language to implement those approaches. In short, the LAW Group wanted to ensure that DC is not falling behind, or taking an approach that—without justification—is wildly divergent from that of, other jurisdictions. Our aim has been to give the LAW Group relevant information about what the states are doing in 2018 so that the group's discussions and proposals were well informed and up-to-date.

For example, we researched the length of temporary protective orders (TPOs) in each of the 50 states. We also researched whether under each state's statute TPOs can be extended and, if so, for what reasons. We found:

- Most commonly, TPOs are granted for somewhere between 10 – 21 days. Fifteen states typically grant TPOs for either 14 or 15 days.[i]
- The statutory language in more than 30 states explicitly provides that a TPO will remain in effect until a hearing is held on a petitioner's request for a more permanent protective order; typically, the statutes in those jurisdictions state that a hearing will be held within a certain number of days and also provide that if the hearing is not

held as initially scheduled, the TPO may be extended until the hearing takes place.[ii] Fewer than 20 states set a fixed length for a TPO, but the majority of those that do provide for the possibility of an extension under certain circumstances.[iii]

- Under the proposed legislation, TPOs would "remain in effect for an initial period not to exceed 14 days" but could be extended as necessary to complete service and a hearing on the petition". This approach—which was intended by the LAW Group drafters to minimize barriers for petitioners to stay involved in the court process and increase efficiency of the court—is squarely in line with the statutes in other jurisdictions, which commonly provide the option for one or more extensions if service has not been completed, upon consent of both parties, or for other "good cause."

Thank you, Chairman Allen and Members of the Committee for your time. We would also like to thank the LAW Group for including Hogan Lovells in the process of developing this bill. I would be happy to respond to any questions.

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[i] Colo. Rev. Stat. Ann. § 13-14-104.5(10); Conn. Gen. Stat. Ann. § 46b-15(b); Del. Code Ann. tit. 10, § 1043(d); Fla. Stat. Ann. § 741.30(5)(c); Idaho Code Ann. § 39-6308 (5); Ky. Rev. Stat. Ann. § 403.730; Mo. Ann. Stat. § 455.040; N.D. Cent. Code Ann. § 14-07.1-03; Okla. Stat. Ann. tit. 22, § 60.3; S.C. Code Ann. § 20-4-50; Tenn. Code Ann. § 36-3-605; Vt. Stat. Ann. tit. 15, § 1104; Va. Code Ann. § 16.1-253.1; Wash. Rev. Code Ann. § 26.50.070; Wis. Stat. Ann. § 813.12.

[ii] Ala. Code § 30-5-6; Ark. Code Ann. § 9-15-204; Colo. Rev. Stat. Ann. § 13-14-104.5(10); Conn. Gen. Stat. Ann. § 46b-15(b); Del. Code Ann. tit. 10, § 1043(d); Fla. Stat. Ann. § 741.30(5)(c); Ga. Code Ann. § 19-13-3(c); Iowa Code Ann. § 236.4.1; Kan. Stat. Ann. § 60-3106; Ky. Rev. Stat. Ann. § 403.730; La. Stat. Ann. § 46:2135; Me. Rev. Stat. tit. 19-A, § 4006; Mo. Ann. Stat. § 455.040; Neb. Rev. Stat. Ann. § 42-925; Nev. Rev. Stat. Ann. § 33.020; N.H. Rev. Stat. Ann. §§ 173-B:3 and B:4; N.J. Stat. Ann. § 2C:25-28; N.M. Stat. Ann. § 40-13-4; N.Y. Fam. Ct. Act § 828; N.C. Gen. Stat. Ann. § 50B-2; N.D. Cent. Code Ann. § 14-07.1-03; Ohio Rev. Code Ann. § 3113.31(D)(2); Okla. Stat. Ann. tit. 22, § 60.3; 23 Pa. Stat. and Cons. Stat. Ann. § 6107; S.C. Code Ann. § 20-4-50; S.D. Codified Laws § 25-10-7; Tenn. Code Ann. § 36-3-605; Utah Code Ann. § 78B-7-107; Vt. Stat. Ann. tit. 15, § 1104; Va. Code Ann. § 16.1-253.1; W. Va. Code Ann. § 48-27-403; Wis. Stat. Ann. § 813.12; Wyo. Stat. Ann. § 35-21-104.

[iii] Alaska Stat. Ann. § 18.66.110(a); Ariz. Rev. Stat. Ann. § 13-3624(E); Cal. Fam. Code § 6256; Haw. Rev. Stat. Ann. § 586-5(a); Idaho Code Ann. § 39-6308 (5); 750 Ill. Comp. Stat. Ann. 60/220(a); Ind. Code Ann. § 34-26-5-9(e); Md. Code Ann., Fam. Law § 4-505; Mass. Gen. Laws Ann. ch. 209A, § 4; Mich. Comp. Laws Ann. § 600.2950; Minn. Stat. Ann. § 518B.01; Miss. Code. Ann. § 93-21-15(b); Mont. Code Ann. § 40-15-201; Or. Rev. Stat. Ann. § 107.718; 8 R.I. Gen. Laws Ann. § 8-8.1-4; Tex. Fam. Code Ann. § 83.002; Wash. Rev. Code Ann. § 26.50.070.

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Testimony Before the District of Columbia Council
Committee on Judiciary and Public Safety
June 21, 2018

Public Hearing:
B22-780: Intrafamily Offenses and Anti-Stalking Orders Amendment Act of 2018

Aubrey Edwards-Luce
Senior Policy Attorney
Children's Law Center

Introduction

Good afternoon Chairman Allen and members of the Committee. My name is Aubrey Edwards-Luce. I am a Senior Policy Attorney at Children's Law Center.[1] I am testifying today on behalf of Children's Law Center, which fights so every DC child can grow up with a loving family, good health and a quality education. With more than 100 staff and hundreds of pro bono lawyers, Children's Law Center reaches 1 out of every 9 children in DC's poorest neighborhoods – more than 5,000 children and families each year. Nearly all the children we represent in custody and neglect cases are survivors of intrafamily offenses.

I appreciate this opportunity to testify about the Intrafamily Offenses and Anti-Stalking Orders Amendment Act of 2018 ("the Act"). The Act proposes changes to DC law that will grant greater access to the Domestic Violence (DV) Court and benefit DV and stalking victims in a number of ways. We understand other witnesses will be testifying about volume of filings in the DV court and how the Act will assist adult survivors,[2] but we are here to support the bill because children are survivors whose safety and wellbeing are significant impacted by the efficiency and effectiveness of DC's civil protection order process.

Children are Survivors Too

Unfortunately, like adults, children are survivors of intrafamily violence too. Children are witnesses to domestic violence. They are unintentionally harmed during

domestic violence incidents. And sometimes children are survivors of intentional intrafamily offenses, sexual abuse, or sexual assault. As survivors, children have significant stake in the effectiveness of DC's Civil Protection Order (CPO) process.

Children Witness Domestic Violence

Witnessing domestic violence can damage the wellbeing of children. In homes were domestic violence is happening, between 80-90% of the children can give painful details about the violence taking place in their homes.[3] This is very distressing given that between 3.3 and 10 million children witness or are exposed to DV every year.[4]

While not all children experience negative effects, those who have been exposed to domestic violence are more likely than other children to exhibit behavioral, social, emotional, cognitive, attitudinal, or long-term problems.[5] These problems can include depression, anxiety, low self-esteem, difficulty with concentration and task completion in school, lack of conflict resolution skills, pro-violence attitudes, delinquency, and substance use.[6] Domestic violence exposure during childhood may lead to another generation of domestic violence. A study showed that men who were exposed to domestic violence during their childhood were nearly four times more likely than their peers to be adult domestic violence perpetrators.[7]

Children are Often Abused in Homes Where Domestic Violence is Occurring

Child abuse and domestic violence often occur together. Researcher have found that amongst all the homes where either domestic violence between adults or child

abuse were occurring, 30-60% of these homes had both forms of intrafamily violence occurring inside their walls. [8] Children's Law Center attorneys frequently become aware of the DV occurring in the District when children are injured during a domestic violence incident. For example, CLC has a client who was one-year-old when the child sustained bruises on their torso while one parent was intentionally assaulting the other. We can't know how many incidents of domestic violence the child witnessed before this one that left a mark, but we do know there are many children who are caught in the intersection of domestic violence and child abuse. In 2017, DC's Child and Family Services Agency received 992 hotline reports where domestic violence was the alleged form of child abuse and neglect. In fact, the number of hotline calls regarding domestic violence has risen every year since 2015.[9] Some of these children become subjects of child neglect court cases where judges can issue protection orders when necessary.

Children Survive Intentional Acts of Violence

Another segment of child survivors do not require child welfare system involvement, but they do need access to civil protection. This group includes children and youth who are the direct targets of DV, intimate partner violence, and sexual assault and abuse by adults who are not their parents, guardians, or custodians. They are children who are abused by their parent's partners, teens who are assaulted by their own romantic partners, and youth who are being commercially and sexually exploited by adults in exchange for housing or safety. Whether it is a 16 year-old who was

assaulted by her girlfriend, or a 13 year-old who was being sexually exploited by his pimp, these children are also survivors. When DC's children need civil protection from their assailants, it is essential that this relief be readily available.

Protective Orders Can Help Children Too

The DC Code allows judicial officers to issue Civil Protection Orders (CPOs) that can provide a variety of relief to the petitioner, including (but not limited to): directing respondents to stay away from the petitioner, awarding temporary custody of any children of the parties, awarding visitation rights, or directing the respondent to relinquish any firearms.[10] Going through the process of obtaining a CPO can be very risky for the survivor.[11] Studies suggests that the taking on the risk of obtaining a CPO often provides survivors with number of benefits such as improved senses of well-being, self-esteem, and safety after receiving civil protection orders.[12] . Through our experiences in child neglect and child custody cases, we have seen some specific ways that protective orders can help the three types of child survivors identified above.

How CPOs Can Help Children who Witness DV

One way that CPOs help children who witness DV is by preventing repeated exposure to domestic violence. Repeated exposure to DV can have cumulative negative effects. For example, children who have been exposed to domestic violence two or more times are at a greater risk for dissociation, i.e., a detachment from reality, than their peers who were exposed to DV only once.[13] When specifically crafted to address the

unique ways that perpetrators attempt to control survivors who are seeking protection, such as threatening the survivor parent in front of the child or at the child's school at the end of the school day, CPOs can narrow the risks that child is repeatedly exposed to DV.

CPOs can support the testimony of children who witness domestic violence. When prosecutors ask these children to testify in criminal proceedings against the perpetrator, child advocates often have to evaluate the necessity of the child's testimony and the potential distress the child will experience by facing the alleged perpetrator and oppositional attorneys while testifying. Typically, child advocates will urge for important facts to be presented through other evidence or witnesses wherever possible. However, sometimes the child's testimony is essential to the case. In those situations, CPOs can provide information that supports the credibility of the child's testimony and ultimately helps to obtain a guilty verdict.

In our experience, children who witness DV also gain intangible benefits from seeing their survivor parents acquire CPOs. The CPO helps quell the anxiety of some children who are in foster care and are worried about their survivor parents' safety. For some youth, just knowing that the police know what to do if their parent calls for help makes them less likely to leave their foster home to make an unauthorized visit to check on their parent. Additionally, knowing that their survivor parent has taken some steps

to protect themselves allows a child who witnessed DV to see a nonviolent way to overcome serious problems.

How CPOs Can Help Children who are Abused in Homes where DV Occurs

The information contained in CPOs can help children in neglect and custody cases. As independent investigators, our guardian *ad litem* attorneys often consult reports made during protection order proceedings to get a holistic picture of our clients' family dynamics, risks to their wellbeing, and the efforts their parents have taken to keep them safe. The history we gain from protection orders informs our best interest recommendations about whether the child needs to have a neglect and abuse court case, what services the child and parents need, where the child should live, and what visitation should look like.

The timely acquisition of CPOs can prevent children from being separated from their parent. When the survivor parent has obtained a CPO and taken other reasonable steps to protect the child from being harmed by or exposed to domestic violence, it forces people in the child welfare system to closely examine whether the child can safely remain with the surviving parent. Because research shows that separation from a parent can be very traumatic for children, CPOs typically are a factor that supports a recommendation that the child should remain with the petitioner parent. Even when concerns for the child's safety do not allow the child to remain with the surviving

parent, the existence of a CPO can be a protective factor that weighs in favor of allowing the child to safely visit with the surviving parent and any siblings in their home.

When the survivor parent accesses a CPO, the CPO often helps a child in custody cases. CPOs also help the child achieve custody with the survivor parent. CPOs frequently contain judicial findings of an intrafamily offense. This finding has significant impact in subsequent child custody cases. After a judge finds that an intrafamily offense occurred, the burden of proof in the custody case shifts to the offending parent to show why he should share physical and legal custody of the child with the survivor parent.[14] This burden shift aligns with the best practice of maintaining the relationship between the non-offending parent and the child.[15]

How CPOs Can Help Children Who Survive Intentional Acts of Violence

Children and youth who survive violence from adults and peers can benefit from the empowerment that CPOs can bring, as well as specific orders from the court. Approximately 10% of high school students report experiencing physical dating violence in the last year.[16] Under the current DC Code, survivors of teen dating violence can obtain CPOs that stop the perpetrator from harming or threatening the survivor in person or online.

CPOs can be very important for children who are being commercially and sexually exploited. Such children and youth typically have a difficult time obtaining criminal protection orders because the burden of proof is so high and the risks of

confronting the trafficker can be great. CPOs offer an alternative means to obtain some protection from their assailants. When a criminal case is initiated, prosecutors can use CPOs as evidence of the exploitative nature of the relationship between the youth and the adult defendant. This can help obtain a guilty verdict.

Children's Law Center Supports B22-0780

The Children's Law Center supports B22-0780, The Intrafamily Offenses and Anti-Stalking Orders Amendment Act of 2018 ("the Act"). We are pleased to have been part of a community of advocates for survivors who worked together on goals of making DV court about intimate violence that needs a specialized court and ensuring access of special populations. The amendments contained in the Act have been drafted in such a way that a wider group of vulnerable children and youth can also request protection through the DV unit. The remaining sections of my testimony review the aspects of bill that Children's Law Center views as strengths, the areas in which the bill could be improved, and general recommendations to enhance the CPO process for children and youth.

Strengths of B22-0780

One of the primary strengths of the Act is that it will free up DV court resources to better serve petitioners who experience crimes of a familial or intimate nature. By excluding "persons related solely by a landlord and tenant relationship," from the new definition of household member the DV Court will be able to more expediently address

the petitions of survivors of dating violence, domestic violence, intimate partner violence, and sex trafficking.[17]

Another strength of the bill is that is creates definitions of household member and intimate partner that clearly apply to the relationship between a child and their parent's cohabitating partner and to victims of non-familial sex trafficking.

Additionally, Children's Law Center supports the Act's inclusion of amendments that allow youth (or their parent, guardian, custodian, or other appropriate adult) to petition for civil protection if a person with whom they do not have a significant relationship sexually abuses or assaults them. Sexual assault and abuse are intimate crimes by nature, regardless of the relationship between the child and the perpetrator. Therefore, we support the DV Court as the proper place for child survivors to seek civil protection.

Lastly, we are excited to see that the Act proposes to add staff to the DV unit of Metropolitan Police Department (MPD). We understand that effectuating service for temporary orders of protection can be a challenging and time consuming task. By adding more staff and also allowing the court to extend a temporary order in increment up to 28 days, we believe the Act will promote more efficient and effective service.

Improvements for B22-0780

While the Act has a number of strengths, there are a few points of clarity needed. First, the definition of "sexual abuse" is not defined in the Act or by any section of the

DC Code that the Act refers to. Proposed § 16-1003 (b)(2) and (3) of the Act allows minors between the ages of 12 and 16 (or their parent, guardian, custodian, or other appropriate adult) to petition for a protection order for the youth if they have been sexually abused or assaulted. While we support this expanded access to CPOs for youth, we are concerned that the DC law that the Act references, DC Code § 22-3001 (10), contains a definition for significant relationship, sexual contact and sex act, but does not contain a definition of sexual abuse. CLC recommends that the Act reference the definition of sexual abuse found in DC Code § 4-1301.02 (1)(A)(ii). To be most comprehensive, we recommend that the Council amend the definitions of sex trafficking referenced in DC Code § 4-1301.02 (1)(A)(ii) and (15A) to include a reference to the local definition of sex trafficking of children found in DC Code § 22-1834(a).[18]

While Children's Law Center supports the addition of allegations of coerced commercial sex acts into the list of offenses found in proposed § 16-1003 (a)(3), we are also concerned that this addition does not reflect the federal definition of severe forms of trafficking, which states that coercion, force, and fraud are not necessary elements for the sex trafficking of children.[19] Therefore, we recommend that proposed § 16-1003(a)(3) be edited to reflect that coercion isn't necessary when the petition alleges that the victim is a minor.

Additionally, we recommend that the committee closely examine the effect that the adult filing requirement in Proposed § 16-1003 (b)(3) will have on the rate youth will

disclose sexual abuse and engage in the CPO process. Proposed § 16-1003 (b)(3) requires for an adult to file on behalf of a youth who is sexually abused by someone they have a significant relationship with. Research indicates that some youth view adult involvement as a barrier to pursuing CPOs.[20] As currently written the Act may unintentionally dissuade a teen from disclosing sexual abuse by a coach or a religious leader and deny the youth the potential empowerment that often accompanies obtaining a CPO. Advocates have also indicated that youth are deterred from pursuing a CPO for intimate partner violence from the fear of having to disclose to their parents. We understand that parents of youth under the age of 17 want to know if their child is being assaulted or abused.[21] Therefore, we recommend that the Committee consider substituting an adult notice requirement in lieu of the adult filing involvement requirement.[22]

Next, we are concerned that statements made by petitioners who are minors or survivors of coerced commercial sex acts or sex trafficking might be used against the survivors in a subsequent criminal or juvenile matters. The potential for their statements to be used against victims of sex trafficking may be deterred from accessing CPOs. We advise the committee to add the following paragraphs to Proposed Section 16-1002:

(b) Statement, testimony, or discovery responses of the petitioner in any civil proceeding under this subchapter

(i) shall be inadmissible in any criminal proceeding against the petitioner or in any proceeding under Subchapter 1, Chapter 23, Title 16 of the DC Code; and

(ii) shall not constitute a waiver of the petitioner's right against self-incrimination in any future criminal proceeding or in any proceeding under Subchapter 1, Chapter 23, Title 16 of the DC Code.

(c) Paragraph (b) applies when the petitioner is:

(i) a minor;

(ii) a victim of coercion to commit a commercial sex act as defined by section 101(4) of the Prohibition Against Human Trafficking Amendment Act of 2010, effective October 23, 2010 (D.C. Law 18-239; D.C. Official Code § 22-1831(4));

(iii) a victim of sex trafficking of children as defined by section 101(4) of the Prohibition Against Human Trafficking Amendment Act of 2010, effective October 23, 2010 (D.C. Law 18-239; D.C. Official Code § 22-1834(a)); or

(iv) a victim of sex trafficking or severe forms of trafficking in person as defined by section 103(10) and (9)(A) of the Trafficking Victims Protection Act of 2000, approved October 28,2000 (l l4 Stat. 1469; 22 U.S.C. § 7102(10) and(9)(A))

General Enhancements to the CPO Process for Children and Youth

Children's Law Center makes three final general recommendations to the committee about how to improve the effectiveness of CPOs for children and youth. First, research indicates that teens and parents are ill-informed about the availability of CPOs.[23] The committee should investigate whether additional funds are needed to ensure that education can be offered in DC schools and other places that youth frequent like Out of School Time programming for students, parents, and staff about the CPO process. These funds could empower youth survivors to obtain CPOs and decrease the rates of teen dating violence. This education could also encourage youth to disclose violence to their parent or trusted adult. Additional resources may be needed to effectuate this education.[24]

Finally, DC youth need the committee to identify ways to improve the stakeholders' responses to CPO violations. When CPO violations are ignored, youth do not feel safer in their schools, homes, or communities.[25] Through our research, experience, and discussions with fellow advocates, we have learned that consistent and trauma-informed responses to CPO violations are likely to improve youths' perceptions of CPOs effectiveness, thus making them more likely to pursue a CPO when needed. Young people have called for improved responses to CPO violations and they have provided recommendations for strengthening the impact of CPOs.[26] We look forward to working with the committee and the community to continue to improve the safety of the District's child survivors.

Conclusion

Thank you for the opportunity to testify. I am happy to answer any questions.

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[1] Children's Law Center fights so every child in DC can grow up with a loving family, good health and a quality education. Judges, pediatricians and families turn to us to advocate for children who are abused or neglected, who aren't learning in school, or who have health problems that can't be solved by medicine alone. With more than 100 staff and hundreds of pro bono lawyers, we reach 1 out of every 9 children in DC's poorest neighborhoods – more than 5,000 children and families each year. And, we multiply this impact by advocating for city-wide solutions that benefit all children.

[2] The National Center for State Courts reports that in 2016, 46% of DC's 12,715 Domestic Relations Court filings are Civil Protection Order filings. That means that approximately 5,849 CPOs were filed in DC in 2016. National Center for State Courts. *State Court Caseload Digest: 2016 Data*, at 8. (2016). *Retrieved from* http://www.courtstatistics.org/~/media/Microsites/Files/CSP/National-Overview-2016/SCCD_2016.ashx

[3] H. Lien Bragg, U.S. Department of Health and Human Services, Administration on Children, Youth and Families, Children's Bureau. *Child Protection in Families Experiencing Domestic Violence* at 9. (2003) *Retrieved from* https://www.childwelfare.gov/pubPDFs/domesticviolence2003.pdf.

[4] *See Child Protection in Families Experiencing Domestic Violence*, at 9.

[5] Child Welfare Information Gateway. *Domestic Violence and the Child Welfare System*, at 3-4. (October 2014) *Retrieved from* https://www.childwelfare.gov/pubPDFs/domestic-violence.pdf.

[6] *See Domestic Violence and the Child Welfare System*, at 3-4 .

[7] Charles Whitfield et al., *Violent Childhood Experiences and the Risk of Intimate Partner Violence as Adults* at 166-185. Journal of Interpersonal Violence. (February 2003) *Retrieved from* http://journals.sagepub.com/doi/abs/10.1177/0886260502238733.

[8] See *Child Protection in Families Experiencing Domestic Violence* at 7. .

[9] CFSA received 582 calls, 743, and 992 in 2015, 2016, and 2017. Those cases involved 268, 630, and 760 children respectively. . See, CFSA FY15 Performance Oversight Pre-Hearing Responses, Q22. CFSA FY16 Performance Oversight Pre-Hearing Responses, Q8 & 9. CFSA FY17 Performance Oversight Pre-Hearing Responses, Q8.

[10] DC Code § 16-1005 (c).

[11] Victims reported an increase in abuse in some cases: those reporting incidents of stalking rose from 4% to 7%; repeated physical abuse 3% to 8%; repeated psychological abuse 4% to 13%. Susan L. Keilitz et al., U.S. Department of Justice, Office of Justice Programs, National Institute of Justice Research Preview, *Civil Protection Orders: Victims' Views on Effectiveness* at 2. (January 1998) *Retrieved from* https://www.ncjrs.gov/pdffiles/fs000191.pdf

[12]During the initial interviews conducted one month after receiving a CPO, 72% reported that their lives had improved; in interviews 6 months later, 85% reported improvement. More than 90% reported feeling better about themselves and 80% felt safer. *See Civil Protection Orders: Victims' Views on Effectiveness*, at 2. Civil Protection Orders (CPOs) empower women survivors and increase their agency. *See* Robin L. Baron, *Do Orders of Protection Actually Shield Domestic Violence Victims?*, The Crime Report (January 23, 2018). *Retrieved from* https://thecrimereport.org/2018/01/23/do-orders-of-protection-actually-shield-victims/. Researchers found that 30 to 70% of survivors report that the domestic violence stopped after the received CPOs.. TK Logan & Robert Walker, *Civil Protective Orders Effectiveness in Stopping or Reducing Partner Violence: Challenges Remain in Rural Areas with Access and Enforcement* at 3. Carsey Institute, Policy Brief No. 18 (Spring 2011) *Retrieved from* https://carsey.unh.edu/publication/civil-protective-orders-effective-stopping-or-reducing-partner-violence-challenges (citing TK Logan & Robert Walker, Civil Protective Order Outcomes Violations and Perceptions of Effectiveness, 24 J. Interpersonal Violence 675, 677 (2009)). Additionally, in a study conducted in Kentucky, over 85% of women thought that their protective order was effective. They reported fewer days of distress and less sleep loss due to abuse. *Id.*

[13]Ericka Kimball. *Edleson Revisited: Reviewing Children's Witnessing of Domestic Violence 15 Years Later* at 4. Journal of Family Violence · (November 2015) *Retrieved from* https://www.researchgate.net/profile/Ericka_Kimball/publication/284803972_Edleson_Revisited_Reviewing_Children%27s_Witnessing_of_Domestic_Violence_15_Years_Later/links/57f1330608ae280dd0b27bf8/Edleson-Revisited-Reviewing-Childrens-Witnessing-of-Domestic-Violence-15-Years-Later.pdf?origin=publication_detail.

[14] DC Code § 16-914.

[15] "...the best interests of children are inextricably linked to the best interests of their mothers." National Council of Juvenile and Family Court Judges, Family Violence Department, *Civil Protection Orders: A Guide for Improving Practice* at fn 8. (2010) *Retrieved from* https://www.justice.gov/file/852781/download (quoting Pamela Whitney & Lonna Davis, *Child Abuse and Domestic Violence in Massachusetts: Can Practice Be Integrated in a Public Child Welfare Setting?*, 4 Child Maltreatment 158, 165 (1999)).

[16] National Conference of State Legislatures. *Teen Dating Violence.* (May 2017) *Retrieved from* http://www.ncsl.org/research/health/teen-dating-violence.aspx.

[17] Intrafamily Offenses and Anti-Stalking Orders Amendment Act of 2018, at §16-1001 (5B).

[18] CLC recommended that complete definition in a memo to the Deputy Committee Director for the Committee on the Judiciary and Public Safety on August 18, 2017. See full explanation at page 1 and a proposed language at pages 3-4.

[19] 22 U.S.C.A. § 7102 (9)(A).

[20] S. Layne. *A Quantitative Examination of the Impact of Protective Orders on Teen Dating,* at 40. Walden Dissertations and Doctoral Studies Collection Violence. (2017). *Retrieved from* https://scholarworks.waldenu.edu/cgi/viewcontent.cgi?article=5331&context=dissertations. *See also,* Break the Cycle. *Youth Access to Protection Orders* at 2. (2014) Retrieved from https://www.breakthecycle.org/sites/default/files/Youth%20Access%20to%20Protection%20Orders%20-%20A%20National%20Overview_0_0.pdf.

[21] We also understand that some community members are concerned about youth forcing their school coaches or Principals to miss work by abusing the CPO process. This reasoning is very problematic. It is indicative of a culture that fears and doubts the intentions of youth (especially youth of color) and inappropriately protects institutions and adults that abuse youth. Instead of removing the adult involvement requirement – which has proven to be a barrier to youth survivors pursuing CPOs- the act will unnecessarily protect against a hypothetical misuse of a CPO process. This protection is unnecessary because the judge who presides over the temporary order hearing should be able to assess the evidence and only "cause the respondent to miss work if they find that the child is immediately endangered by the principal.

[22] The current stalking section of the DC Code permits, but does not require an adult to file on behalf of a minor seeking an anti-staking order. See DC Code § 16-1062 (a). Proposed §16-1003 (b)(3) should mirror this DC law.

[23] Andrew Klein et al., *An Exploration Study of Juvenile Orders of Protection as a Remedy for Dating Violence* at 90, 92. (May 2013) *Retrieved from* https://www.ncjrs.gov/pdffiles1/nij/grants/242131.pdf.

[24] Victim Services funding may be one area to explore. Additionally, Title IV-E funds may be a source of funding pursuant to the Family First Prevention Services Act.

[25] *See An Exploration Study of Juvenile Orders of Protection,* at 109.

[26] See *An Exploration Study of Juvenile Orders of Protection,* at 110.

Testimony of Elisabeth Olds, SAVRAA Independent Expert Consultant

Public Hearing on the Intrafamily Offenses and Anti-Stalking Orders Amendment Act of 2018

Committee on the Judiciary
Council of the District of Columbia

June 21, 2018

Thank you, Chairman Allen and members of the Committee. My name is Elisabeth Olds, and I'm the Independent Expert Consultant under SAVRAA, the Sexual Assault Victims Rights Amendment Act of 2014. Thank you for the opportunity to speak with you today about the Intrafamily Offenses and Anti-Stalking Orders Amendment Act of 2018. This legislation contains many important improvements in the way that victims of domestic violence, sexual assault, stalking and human trafficking can seek judicial relief in the District, and my testimony speaks specifically to the provisions regarding minors, which I fully support.

The proposed legislation's provisions that would make teenage victims of sexual assault eligible for relief under the Intrafamily Offenses Act regardless of their relationship to the offender, specifically allowing teens ages 12 to 17 to apply for a temporary or civil protection order without a parent or guardian under certain circumstances is consistent with the recommendations made by the SAVRAA Task Force in 2016, and those in my independent evaluation, both of which recommended that victims of peer to peer sexual assault be provided with a confidential, community-based advocate so that they could more confidently reach out for help on their own terms. While the legislation before you today does not address mandated reporting as articulated in the SAVRAA recommendations, it is an essential avenue for teens to seek help that respects their need for autonomy and their agency.

In focus groups with 82 District teenagers, ages 14 to 17, conducted by myself and the SAVRAA Task Force, teens strongly indicated that the reason many teens do not seek help after

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being sexually assaulted are fear of involvement by the Child and Family Services Agency (CFSA), and whether someone would tell their parents or their peers at all in some cases, and without their knowledge or control over that process in others. Consistently, they indicated would like a safe space in which to independently obtain information about their legal rights, safety planning, available medical care and counseling.

Teens highly value their growing autonomy and many may have reason to fear their parents or authorities being notified of their assault and the circumstances surrounding it. This leads them to report sexual assault at a much lower rate than adults with an estimated 8-13% of sexual assaults against minors are ever reported to the criminal justice system, as compared to an adult reporting rate that ranges from 15-39% in various studies.[1] Using incidence rate data, there are an estimated 4,184 teens experienced some form of sexual victimization each year.[2] However, in 2017, MPD received 148 reports of sexual assault of a teenager between the ages of 12 and 17,[3] while 144 teenagers sought assistance through DC SAFE in the District's two Domestic Violence Intake Centers for teen dating violence and family violence.

While we know teenagers report at extremely low rates, we must make as many avenues for safe help seeking available to teens in the District as possible. By providing a way for teens that have been sexually assaulted to obtain protection orders on their own in cases of peer to peer sexual assault, this legislation does just that. It would be ideal in terms of youth-friendly

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[1] Campbell, Greeson, et. al. (2012) pg. 142; Campbell, et. al. (2011) Adolescent Sexual Assault Victims' Experiences with SANE SARTs and the Criminal Justice System, pg. 11. https://www.ncjrs.gov/pdffiles1/nij/grants/234466.pdf.

[2] Sickmund, M., and Puzzanchera, C. (eds.) (2014). *Juvenile Offenders and Victims: 2014 National Report.* Pittsburgh, PA: National Center for Juvenile Justice. Pg. 37, citing incidence rates for teens, age 10-13, as 7.7% experiencing sexual victimization and 1.4% experiencing a felony-level sexual assault, while 16.3% of 14 to 17 year olds experienced some form of sexual victimization in the past year, and 5.3% experienced what the survey described as felony-level sexual assault. Definitions of sexual assault differ by jurisdiction and therefore this verbiage is being used here simply to indicate severity.

[3] Metropolitan Police Department, Family Services and Youth Investigative Division, January, 2018. Of those 148 reports, 100 were committed by family members or persons in a position of trust; 11 by strangers, and 37 by peers or acquaintances.

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accessibility to remove the provision requiring a parent or guardian to file on behalf of a minor in cases of where a relationship of trust is involved, particularly given the judicial oversight already involved in the process and the existing mandated reporting requirements. However, the inclusion of "an other appropriate adult" besides a parent or guardian both for purposes of filing and for providing notice from the court after the order is granted significantly increases accessibility for teens struggling with a host of diverse circumstances. I would also encourage the council to consider amending the legislation to include a way for 12 to 15 year olds to independently access the newly proposed anti-stalking order, as the legislation proposes for those age 16 and older. These younger teens should not be overlooked as their need for these anti-stalking orders, whether against someone at school, a neighbor, or a stranger, may be far higher than we currently appreciate.

I would like to thank the Chairman and Committee Members for putting forth this bill, and for all of your work to empower victims of domestic violence, sexual assault and stalking in the District. I would be happy to answer any questions you might have and provide follow-up information as requested.

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Testimony of Survivors and Advocates for Empowerment (DC SAFE)
Public Hearing on the Intrafamily Offenses and Anti-Stalking Orders Amendment Act of 2018
Committee on the Judiciary - DC Council
June 21, 2018

Thank you, Chairman Allen and members of the Committee. My name is Natalia Otero and I'm the Executive Director of DC SAFE. DC SAFE provides advocacy, resources, and tangible aid to victims of domestic violence in crisis. As the largest access point for these victims to city services, DC SAFE has assisted over 8,000 victims this past year from across all eight wards, and provides advocacy and petition writing for survivors of intimate partner violence in the city's two Domestic Violence Intake Centers. We would like to state our support for the entirety of the Intrafamily Offenses and Anti-Stalking Orders Amendment Act of 2018, and we support the all of the changes suggested by the DC Coalition Against Domestic Violence (DCCADV).

As the primary advocacy organization within the Domestic Violence Intake Centers, DC SAFE works with survivors daily to help them request judicial relief. In 2017, DC SAFE provided court advocacy services to 3,442 survivors, including writing 2,894 petitions for temporary and civil protection orders, accompanying 3,039 victims to their Civil Protection Order hearings, and providing coordinated referrals to a free attorney for 1,550 survivors. Fifty-two percent (52%) of these survivors were assessed at high risk for intimate partner homicide.

Specifically, the definition of a "Household Member" provides an important pathway to safety for those cohabiting in a close relationship and is more in keeping with the mission of the Domestic Violence Unit and the Domestic Violence Intake Centers. The legislation also significantly enhances survivor safety by proving longer temporary protection orders and the opportunity to obtain a two year civil protection order as well as a possible extension without

having to engage in the circular logic of reporting a violation in order to extend the order. The current time frames in which survivors have to obtain service of process, often on a respondent who is actively avoiding it, in order to proceed with their CPO hearing are so short and require so many returns to court to request extensions, that many victims simply give up due to work and childcare pressures. Finally, establishing a dedicated and adequately staffed unit at MPD is essential to survivors' ability achieve service of process. Currently there are eight officers assigned to this unit but there are times when other personnel demands at MPD have reduced the unit to none.

While we support all of the changes made by this important legislation, we would like to also point out that it leaves family cases - those cases between family members rather than intimate partners - within the DVICs and the Domestic Violence Unit. Family cases are distinct from intimate partner cases in that they often involve parties or entire family systems struggling with severe and persistent mental illness and substance abuse. While they can be just as deadly, these cases often do not contain the elements of power and control that are so often the hallmark of intimate partner violence. Therefore, organizations like DC SAFE that are highly effective when addressing intimate partner violence cases are not equipped to assist survivors of family cases. Currently, there are no organizations serving survivors in family cases within the DVICs, and the legal service providers receiving referrals from the DVICs do not represent survivors in those cases. This is a significant gap in services that should be filled by appropriate service providers in the fields of mental health and substance abuse services while allowing the court to hold offenders appropriately accountable. While this is not an objection to the bill, we believe the different experience and needs of intimate partner violence survivors and family violence survivors is a critical distinction that remains unaddressed.

We thank the Chairman and Committee Members for putting forth this bill and the Committee's continued strong commitment to supporting and empowering victims. Should Committee members have any questions, we are happy to provide follow-up information.

DC VOLUNTEER
LAWYERS PROJECT

Intrafamily Offenses and Anti-Stalking Orders Amendment Act of 2019 Hearing

June 21, 2018

Testimony of Lorraine Holmes
Client Advocate, DC Volunteer Lawyers Project

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Client Advocate. My name is Lorraine Holmes and I am the Client Advocate at the DC Volunteer Lawyers Project. Our mission is to recruit, train and support a network of volunteer lawyers to provide high-quality, *pro bono* legal services to low-income domestic violence victims and at-risk children in Washington, DC. Our attorneys handle over **300** civil protection order cases on behalf of victims each year. My job is to help these clients with their non-legal needs including safety planning, crisis intervention, referrals to partner organizations and advocacy. I also regularly contact our clients during the course of the case and afterward to offer emotional support, additional referrals or further legal assistance if needed.

Follow-Up with Clients Regarding Extension of Civil Protection Order. As part of my job as a Client Advocate, I follow up with victims shortly before their civil protection orders expire which is around **10 ½** months after they receive their order. It takes about **1 ½** months for us to prepare new court filings, arrange for service, and get a hearing date before the protection order expires at **1** year. When I call our clients, I ask them whether they would like to file for an extension of their protection order with the assistance of our attorneys.

Many Victims Do Not Want to Relive the Court Process After Less Than 1 Year. Over the last year, I have asked **hundreds** of clients whether they would like an extension; many respond that they are still scared of their abusers and would like to do so. However, once I explain the process, including filling out new court documents, arranging for the abuser to be served the documents, and attending at least one court hearing, they often change their minds. Many clients tell me that they just cannot go through that long and difficult process again. The reasons they give are varied and include:

- They are worried that the court process will provoke their abuser.

- It is too difficult to take time off work.
- It is too difficult to find child care.
- It is too upsetting to face the abuser in court again.

As a result, their protection orders expire and our clients are left unprotected from their abusers.

Conclusion. I thank the Committee for the opportunity to testify today and I hope that Council adopt this bill especially the provision regarding extending the time for civil protection orders. I believe this provision will make a huge difference for our clients. I am available to answer any questions that this committee might have. Thank you.

DC VOLUNTEER
LAWYERS PROJECT

Intrafamily Offenses and Anti-Stalking Orders Amendment Act of 2019 Hearing

June 21, 2018

Testimony of George Marcou
Volunteer Lawyer, DC Volunteer Lawyers Project

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Experience as a Volunteer Attorney. My name is George Marcou. I am a partner in a private law firm and a very active *pro bo*no attorney for domestic violence survivors. I have represented well in excess of **70** victim petitioners to obtain civil protection orders over the last **nine** years in conjunction with the DC Volunteer Lawyers Project. As a result, I have spent many **hundreds** of hours in the DC Superior Court Domestic Violence Unit courtrooms both presenting my cases and listening to many hundreds of other domestic violence cases while waiting for my cases to be called. I have made this enormous commitment of my time, because I am humbled and inspired by the courage and sacrifice of these victims who are finally taking a stand against their abusers and trying to create new lives for themselves and very often, their children.

Support for Bill. I come before you today to express my very strong support for the Intrafamily Offenses and Anti-Stalking Orders Amendment of 2018. I would like to highlight for the committee two provisions of the bill which I think are especially important:

1) provision of the bill which gives the court discretion to issue **two**-year terms for initial CPOs and longer terms in extension cases; and
2) the provision which allows the court to grant temporary protection orders for up to **28** days without the consent parties, rather than the current **14**-day limit.

CPO Process is Demanding. When a victim undertakes a CPO it is a very arduous, scary, humiliating and time demanding process. It might even be described as an ordeal, requiring very substantial amounts of courage and resolve. The victim typically first goes to the Domestic Violence Intake Center, swears out a Petition and then goes to a courtroom and testifies in open court about the abuse. If successful, the court issues a **14**-day temporary protection order and sets a trial date **14** days hence. In those **14** days, the victim then is responsible for serving

the papers on the abuser—ironic because the abuser is basically the last person on earth the victim wants to have anything to do with. Also, the victim must prepare for trial and gather evidence of the abuse, such as medical reports, police reports, audios of **911** calls, threatening texts from the abuser; subpoena witnesses such as police; get photos of injuries or damage to property; obtain estimates for repairs to property; arrange for witnesses to attend voluntarily, take time off from work or school; have arrangements made for children to be looked after or risk the distraction of the children during the trial; and seek counsel, including pro bono counsel such as myself. It is a LOT to handle in only **14** days, particularly in view of the fact that the victim is already in a state of immediate and profound crisis, such as having to find emergency alternate housing.

The hearings for domestic violence cases typically start at 8:30 am and can take up to all day. The atmosphere is very tense and stressful. The victims and abusers are all in the same hallway to check in. Once the courtroom is opened, petitioners and respondents are supposed to sit on different sides, but the fact is all day the victims and abusers are in close proximity all day. The typical docket in each of the two courtrooms (**113** and **114**) is about **25** cases but can run to **40** or more cases on Mondays or following holidays. While the victim sits and waits for his/her case to be called, the victim is often exposed to many horrific stories by other victims testifying during the wait. Once the victim's case is called the Court's first question is always "Has the Respondent (accused abuser) been served with the papers?" If not (or if the DC MPD have failed to properly fill out the Return of Service Form which is notoriously complicated) the court cannot proceed on the merits and might grant another **14**-day extension, in which case

the victim is basically back to where the victim first started **14** days earlier. Lack of service is a very, very common occurrence. The provision of this legislation that would allow temporary protection orders to be granted for up **28** days without the consent of both parties would provide victims better opportunities to achieve service on their abusers without having to return to court after **14** days to have their temporary protection ordered extended. If the victim has achieved service and the accused abuser is present, then the matter may be resolved that day by negotiation or a trial. If a trial is held, the victim is subject to questioning by the abuser or the abuser's attorney. Occasionally, a victim gets a CPO in just **two** days total—the initial visit to the Courthouse and the first trial date. But in my many years of experience, this very short duration is very much the exception and NOT the rule. More often than not, the abuser cannot be served because the abuser is "off grid" or is actively eluding service or there is no fixed address or has multiple, fluid addresses. In these instances, the victim—if she still has the will to pursue the CPO—must prepare for another trial date in **14** days. This cycle is very common and very taxing on the victim, as the victim must prepare for **three, four** or more trial dates before either achieving service and getting a substantive CPO hearing on the merits or abandoning the effort for the CPO altogether.

True Case. My most recent CPO case concluded this past Tuesday and is a sobering example of what a victim might have to go through. My client first filed for her CPO in February 2018. There were more than a dozen unsuccessful attempts at service by professional process servers and the PG County police (I presented evidence that the accused abuser was actively eluding service and there were multiple motions by the abuser to set aside and vacate the CPO once it was

obtained). By my count the victim (my client) had to prepare for and endure at least **SEVEN** trial dates during the pendency of her attempt to obtain a CPO including preparing for trial and getting coverage for the **three** children in common - each time. While this case is the longest running case I have handled in by **70** plus case and **nine** plus years of *pro bono* domestic violence representations, it is by no means unusual regarding the enormous sacrifice and stress placed on the victim.

If a victim does obtain the current one-year CPO and wishes to get a **one**-year extension then the victim must file a motion and show "good cause" and the process described above starts again.

Conclusion. In view of the enormous sacrifice required of successful petitioners for a Civil Protection Order here in DC, extending the time period for temporary protection orders and civil protection orders is a fair reward for the victims' courage and sacrifice. I thank the Committee for its time and I am happy to take any questions.

Intrafamily Offenses and Anti-Stalking Orders Amendment Act of 2019 Hearing

June 21, 2018
Testimony of Muge Kiy
Public Witness

Attorney and Victim of Domestic Violence. Good morning Chairman Allen and the committee. My name is Muge Kiy, and I am a DC resident, an attorney, a lobbyist, and a survivor of domestic violence. I first received a civil protection order in December 2016 at DC Superior Court after over a 2-year period my abuser physically assaulted me several times, eight different occasions of which are detailed in the protection order the judge granted me, including making threats against my life and raping me. The order includes the instance when he burned me with a hot iron, going for my face, which I covered with this arm. It does not include occasions that took place in San Francisco, Boulder, or New Orleans, which included – without being exhaustive – threatening to cut my head off and bury it in a separate place from my body so no one would ever find me, dragging me back inside through a window when I escaped onto a fire escape (where I almost fell off), kicking me in the stomach after kicking my legs out from under me, and punching me in the face.

Lengthy CPO Process. Testifying about these events is not the complete story of getting my CPO. When I informed my abuser of my intentions of getting a CPO, he told me "You can try and get a CPO if you like, but you're going to have a tough time with service." It would take 10 months from the date I filed my petition to the date I received my CPO. Before the Court actually held a trial about the assaults and threats, I had my temporary protection order extended on four occasions. For three of these extensions, I lived with the fear of having to face my abuser at 14 days notice, should he get out of a Colorado jail (unrelated) before the decreed time. I served him in jail twice: first, on day 13 of the 14 days I had after receiving my TPO when he called me from jail and thus alerted me to his whereabouts; and second when I amended my TPO to include more occasions of violence while he was still in jail. When I finally received a hearing date after he was out of jail, I was told that my second service was not in the docket and I had to

come back to court again and again arguing that my service was good (DC Volunteer Lawyers Project, "DCVLP", finally stepped in to help me – I was one of the lucky ones that had help). Even once I obtained the CPO, I lived with the thought of having to come back to court in less than a year and having to relive horrific events to get a year-long extension of my CPO, which is exactly what happened in December 2017. Although, I had excellent representation by the DCVLP and was fortunate enough to receive an extension, I now live with the dread of returning to the courtroom this December to ask to renew my CPO and possibly face my abuser (note that he has never shown up for a hearing – sending his lawyer instead – and because of this still has an active warrant out for his arrest – one which is likely to be disregarded by police once my CPO expires). As well, I have to live with the fear of not having my CPO renewed again and having him return to DC and continue to show up in those places that he knows I frequent. Or at my job, since having stalked my LinkedIn account he knows where I currently work.

Support for Increasing Time for Temporary Protection Orders from 14 Days to 20 Days. The law as it stands with regard to the length of temporary protection orders allows them to be extended for no longer than 14 days unless the respondent consents. I explained earlier how problematic returning to court every two weeks was for me on a mental level and, having an abuser who did everything in his power to make sure I wouldn't receive my CPO, how unlikely it would have been in my case for him to consent to an extension. If the law was changed so that judges could issue temporary protection orders for up to 28 days, it would give survivors like myself more time to accomplish service without having to constantly worry about the possibility of facing our abusers in court every 14 days. In addition, every time I went to court I would have to wait for hours in the courtroom until my case was called and my temporary protection order was renewed, which cost hours away from my job – hours which were filled with anxiety that he

would show up, anxiety that I would not receive protection, and anxiety over reliving everything that happened.

Support for Two Year Period. Another provision of the Intrafamily Offenses Amendment Act that I strongly support is the provision which allows initial civil protection orders to be granted for up to two years and for longer periods in extension cases, in which there are compelling circumstances. Under the current law, there was no option for me to get a civil protection order for more than one year, despite the seriousness of the attacks against me by my abuser. Although my civil protection order increased my peace of mind for most of the year that it was in effect, I worried about having to go back to court and face my abuser again, in addition to the fear I felt about the serious possibility of not receiving an extension because there was no violation of my protection order. When I say no violation, I'd like to note that there was no violation that I could put on the record. During the first year of my CPO, my abuser came to DC, stayed in a hotel 3 blocks from my apartment and went to a restaurant that is a little over a block from my apartment – one he knows I frequent. Moreover, he used to constantly check my LinkedIn profile (until I mentioned this in court with his attorney present, at which point I believe he started viewing it from a private setting). The Intrafamily Offenses Amendment Act makes clear that a violation of the protection order is not a requirement for the court to grant an extension. These proposed amendments would help protect and give peace of mind to survivors like me who survived life-threatening physical attacks.

You may hear arguments about respondent's due process rights as a reason not to increase the length for which civil protection orders or temporary protection orders may be granted. But please keep in mind when having done nothing wrong how much my liberty would be restricted when an abuser is allowed back into my life so soon after almost ending it. For a respondent, a

longer TPO or CPO would do nothing more than require him to stay away from his victim and obey the law.

Conclusion. To protect the safety of victims like me, I strongly urge you to adopt the Intrafamily Offenses and Anti-Stalking Orders Amendment Act of 2018. Thank you for the opportunity to speak today. I am happy to answer any questions that the committee may have.

Thank you Chairman Allen, and members of the Committee, for hearing my testimony today. My name is Melika Johnson. I am a DC resident and a domestic violence survivor with experience in navigating the DV Unit of the DC Court System.

Fifteen years ago I married a man who initially appeared to be kind, generous, fun-loving and my best friend. After three months of marriage I began to realize that something was horribly wrong. This man who claimed to love me seemed to enjoy creating chaos in our lives. He would frequently pursue arguments and verbal fights with me that would include verbal and emotional abuse. He would become increasingly angry and threatening. He would throw my personal belongings and other items in our home as a tactic to induce fear in me. I would call the police but he would be sure to leave before they arrived. He would falsely accuse me of infidelity checking my phone records, calling the receptionist at my place of work and questioning her, randomly showing up on my job, and starting intense verbal fights if I would try to leave our home without him. He would try to time exactly when he thought I should arrive at the rail station after my hour and a half commute from the city into the suburbs. If I was even a few minutes late when he picked me up he would get angry, start a fight, and erratically drive the car (speeding and weaving in and out of traffic) in order to scare me. The abuse did not stop even though we were expecting a child. He tried to separate me from those who were closest to me. He would have verbal arguments with my mother, cursing at her. He would call my sister names and fight with her as well. He would deprive me of sleep by continuing arguments well into the early morning hours. He would start rumors amongst our friends that I was being unfaithful. He would put me down if my ideas were not parallel to his own.

My dreams of a happy and fulfilling marriage turned into my worst nightmare. I knew that it was only a matter of time before he would get physically violent with me. He began to push, shove, and grab me during our arguments. He would block me from leaving the room when I wanted to avoid an argument.

My daughter at the age of eight months began to act as if the rantings in our home were normal. She used to respond with fear in her eyes and crying but her response changed, she began to keep playing during these times as if nothing was wrong. I knew that this was not something that I wanted for her, especially after being warned by police on three separate occasions that the situation was only going to get worse and there was no guarantee of safety for me or my child, if I continued to stay in the home with him. So I planned my escape, and with the help of several women I left him.

Shortly thereafter, I was granted a Civil Protection Order (CPO) in the summer of 2005 after he showed up at my home and began a fight with my mother. This was the beginning of a six year battle for a divorce and for custody of my daughter. During this time my daughter, my other family members, my attorneys and I experienced continued abuse, even within the court room. The CPO I obtained was only valid for one year, however my fear lasted much longer than that.

For many years I lived in a state of perpetual fear not knowing what his next move would be and whether he would lash out in court or on the street. My fears included the various possibilities that controlling and violent people utilize to intimidate, maim or even kill their subjects, even their own children. Over the past ten+

years, he has continually violated the CPO by calling my cell phone, leaving voicemail messages, sending text messages, and having third parties show up at my home to deliver items. Despite his tactics I refused to give up fighting for what was best for me and my daughter. So, every year I go to the DV Unit of the Court to request an extension of the CPO. I have been doing this for over ten years, and every time I go to the Court to ask for this extension, I re-live all of those abusive moments to prove to the court that my violent ex-husband is still a threat to me and my daughter. Because of this reality for me, and I am sure many others, the possibility of having an order extended for several years in one visit would provide me with me a peace of mind that I have not known in over a decade.

I am happy to answer any questions that you might have, and thank you for your time.

Intrafamily Offenses and Anti-Stalking Orders Amendment Act of 2018 Public Hearing

June 21, 2018

Testimony of Christina
Public Witness

Good morning. My name is Christina. I am a DC resident and a victim of stalking. Thank you for the opportunity to share my experiences with the committee. My ordeal began in July 2017, when a man I had never met—over 10 years my senior—began stalking me on social media. He asked me if I wanted to hang out, and I politely said "no." After that, he began friending my friends and family and messaging them non-stop. I told him clearly to stop, but he persisted. In October, he messaged me that he would file a police report against my boyfriend. He e-mailed my superiors at work, and in November, he showed up at my office with a wrapped gift and told our front desk receptionist that I was expecting him. Finally, in November 2017, I filed for a civil protection order against my stalker in DC Superior Court, and I was successful in obtaining an order against him in December 2017. But after I obtained the civil protection order, he filed two motions to modify and a motion to vacate, all of which were denied, but each time I had to go to court for the better part of a day and defend myself again. In March, I was exhausted and sought assistance from the DC Volunteer Lawyers Project. When the DCVLP lawyers represented me against his motion to vacate, he began stalking my attorneys. He filed for a civil protection order against one of them and appeared at the office of another with a box of chocolates. He e-mailed almost one hundred people associated with the DC Volunteer Lawyers Project, including board members, junior board members, volunteers, and donors. As a result of this and other violations, including falsifying documents in an attempt to have my boyfriend fired from his job, I filed a motion for criminal contempt and must return to court for this hearing in September. And after December 2018, my CPO against my stalker will expire, so if I

want protection for another year, I will have to return to court in December and start this process again.

From a personal standpoint, this has affected me in more ways than one. Seven times in court means times I have had to take off from work and spend the day trapped in a room with the person I fear and want absolutely nothing to do with. I have had to stand quiet in hearings while this individual has ranted on about how I supposedly want him to love me, how I want to sleep with him, and how all his actions have been justified. Even though I am only in my twenties and don't have a large income, I have taken Ubers to work for months, in fear that he was following me to and from my home. I have lost sleep; I have lost traction at work; and I have lost my feeling of safety.

As I stated earlier, I will be returning to court in September for a criminal contempt hearing, bringing my string of court dates to six months. And once January comes, my CPO against my stalker will expire, forcing me to go back to court if I want to continue to be protected. The thought of having to go through this grueling process all over again in just a few months—simply to be left alone by a stranger—is daunting and overwhelming. I ask you to please adopt the Intrafamily Offenses and Anti-Stalking Orders Amendment Act of 2018 to allow for multi-year civil protection orders to keep people like me safe. Thank you.

The Honorable Charles Allen, Chairperson
Committee on the Judiciary and Public Safety
Bill 22-780, the "Intrafamily Offenses and Anti-Stalking Orders Amendment Act of 2018"
June 21, 2018

Written Testimony of:

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Thank you, Chairperson Allen and members of the Committee, for the opportunity to testify today. My name is Erin Larkin, and I am the Associate Director of Ayuda's Domestic Violence and Family Law Program. For over 40 years, Ayuda has helped immigrants from across the world overcome obstacles, so that they can succeed and thrive in the United States. This past year our Domestic Violence & Family Law Program provided holistic legal and social services to 200 DC residents who are survivors of domestic violence, sexual assault and stalking, helping them achieve safety and security for themselves and their children.

Separating from an abuser is one of the most dangerous time-periods for a victim of domestic violence, particularly if there are children involved. Obtaining a Civil Protection Order (CPO) has been shown to reduce the risk of future injury and increase a person's feeling of safety. In one study involving 2,691 women who reported an incident of intimate partner violence to police, researchers found that having a permanent protection order in effect was associated with an 80 percent reduction in police-reported physical violence in the next year.[1] In another study, the odds of that perpetrator would contact, threaten, psychologically or physically abuse their partner after the partner obtained a protection order were less when compared with women who had reported intimate partner violence but had not obtained protection orders. obtains the best legal results.[2] In a study involving English- and Spanish-speaking women from an urban area, abused women who applied and qualified for a 2-year protection order, irrespective of whether or not they were granted the order, reported significantly lower levels of violence during the

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[1] *See* Benitez, C. et al., "Do Protection Orders Protect?" *Journal of the American Academy of Psychiatry and the Law Online* September 2010, 38 (3) 376-385, citing Holt VL, Kernic MA, Lumley T, et al: Civil protection orders and risk of subsequent police-reported violence. JAMA 288:589–94, 2002; available at http://jaapl.org/content/38/3/376.

[2] *Id.*, citing Holt VL, Kernic MA, Wolf ME, et al., "Do protection orders affect the likelihood of future partner violence and injury?" Am J Prevent Med 24:16–21, 2003.

subsequent 18 months, including lower levels of harassment by their abusers at work.[3] It is important to note, however, that sometimes the act of applying for a protective order can trigger a violent reaction by an abuser, so it is important to survivors work with advocates trained in domestic violence when contemplating their options.

The changes proposed in Bill 22-780, the "Intrafamily Offenses and Anti-Stalking Orders Amendment Act of 2018" will give domestic violence survivors more effective options in achieving safety in several ways. First, it will allow CPOs to be extended for longer than one year at a time, thus reducing the number of times a survivor needs to return to court and face the perpetrator and reducing the chances that filing another motion to extend the CPO will trigger a violent reaction. The bill will also allow the Domestic Violence Unit at DC Superior Court to better focus on the complicated issues facing domestic violence survivors by moving non-intimate partner stalking cases to the civil division and providing a more effective remedy for the cases, as well as eliminating the so-called "common partner" cases that disproportionately clog the docket. We currently have one CPO case, for example, that has had four days of hearings over a period of 6 weeks, because the judge only has about 2 hours per day to devote to the trial.

Before closing, I'd like to recognize some of the people who have worked on the proposals in this bill. First, I'd like to thank the DC Coalition Against Domestic Violence for their leadership in convening the work group that drafted the proposals, my co-chairs for the work group, Trisha Monroe of Legal Aid and Tracy Davis of Bread for the City, for their wisdom and perseverance, the other members of the work group, including Janese Bechtol of the Office of the Attorney General for DC, who collaboratively worked to develop the proposals, Jenny Brody, formerly of

[3] McFarlane, J. et. al., "Protection Orders and Intimate Partner Violence: An 18-Month Study of 150 Black, Hispanic, and White Women," Am J Public Health. 2004 April; 94(4): 613–618; available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1448307

the DC Volunteer Lawyers Project, who initiated the work group, Hogan Lovells who generously donated pro bono time to help with research over the past two years to support the work group, Michelle Garcia, Director of the Office of Victim Services and Justice Grants, for her expertise and feedback on stalking, and, lastly, Chairman Allen and the Judiciary Committee staff who convened stakeholders meetings to ensure the best bill possible. I urge the Committee to pass the bill and strengthen the options for domestic violence survivors to achieve safety and peace of mind.

Thank you.

Intrafamily Offenses and Anti-Stalking Orders Amendment Act of 2018 Public Hearing

June 21, 2018

Testimony of Teresa
Public Witness

Hello, my name is Teresa and I live in Ward 8 in Washington, DC. I am a domestic violence and stalking survivor. My former partner and the father of my child continuously inflicted painful physical and emotional abuse on me. I experienced great trauma from this violence. I obtained a CPO because I feared that he would never leave me and my family alone and that his violence was going to escalate.

I received a CPO against the Respondent in October 2017, but I had to come to court three separate times before it was granted. Each time in court, I had to wait around for hours, take time off of work, and find childcare for my three children. On top of this, it was extremely difficult to serve the Respondent. It took 5- 6 times before the Respondent was properly served, further delaying everything. This process was exhausting and distressing, and one year goes by very fast. I can't believe that I already have to start thinking about doing this whole process over again.

I would have been so grateful to have had my civil protection order granted for two years. CPOs need to last longer than one year for Petitioners to feel safe and secure. It is not fair that the process to obtain a civil protection order takes so long, and then the order only lasts for one short year. It takes several months to recover from the trauma of domestic violence, and I am weary about having to relive my experiences in court again in a few months to obtain a new protection order. I am happy to answer any questions. Thank you for your time.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF VICTIM SERVICES AND JUSTICE GRANTS

Public Hearing on
Bill 22-0780, the "Intrafamily Offenses and Anti-Stalking Orders Amendment Act of 2018"

Testimony of
Michelle M. Garcia
Director

Before the
Committee on the Judiciary and Public Safety
Council of the District of Columbia
The Honorable Charles Allen, Chairperson

John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004
Room 123

June 21, 2018
9:30am

OVSJG
Office of Victim Services
and Justice Grants

Good morning, Chairperson Allen, members, and staff of the Committee on the Judiciary and Public Safety. I am Michelle M. Garcia, the Director of the Office of Victim Services and Justice Grants (OVSJG). I am here to testify on Bill 22-0780, the "Intrafamily Offenses and Anti-Stalking Orders Amendment Act of 2018."

Mayor Muriel Bowser is committed to reducing domestic violence, sexual violence, stalking, and human trafficking in the District and improving outcomes for survivors. We recognize and appreciate the years of effort that went into crafting the bill before us and strongly support the intent to ensure that victims/survivors have access to civil remedies to enhance their safety and hold offenders accountable. But the Executive does have some concerns with the bill that we would like to discuss.

First, we think it is important to carefully consider how the bill proposes to handle new anti-stalking orders. We understand that the Domestic Violence Unit has increasingly seen petitions for protection orders in cases not originally envisioned under the Intrafamily Offenses Act, such as "partner in common" cases and landlords using the civil protection order process to evict a tenant. While we support the intent to alleviate the burden on the Domestic Violence Unit, we are concerned about placing the proposed anti-stalking orders in the Civil Division of the D.C. Superior Court, rather than the Domestic Violence Unit, which would have the effect of separating out different types of stalking cases. While the bill would allow for a victim who is being stalked by an intimate partner, a household member, or a family member to petition for civil protection in the Domestic Violence Unit, positioning the orders in the Civil Division would exclude a significant number of stalking victims from the benefit of having their orders considered under the Domestic Violence Unit, potentially 40 percent of female victims and 50 percent of male victims.[1]

[1] Among female stalking victims, an estimated 60.8% were stalked by a current or former intimate partner, nearly one-quarter (an estimated 24.9%) were stalked by an acquaintance, an estimated 16.2% were stalked by a stranger, and an estimated 6.2% were stalked by a family member. Among male stalking victims, an estimated 43.5% were stalked by an intimate partner, an estimated 31.9% by an acquaintance, an estimated 20.0% by a stranger, and an estimated 9.9% by a family member. [Matthew J. Breiding et al., "Prevalence and Characteristics of Sexual Violence, Stalking, and Intimate Partner Violence Victimization – National Intimate Partner and Sexual Violence Survey, United States, 2011", *Centers for Disease Control and Prevention Morbidity and Mortality Weekly Report*, Vol. 63, No. 8 (2014)].

Stalking presents unique and vexing challenges to the civil and criminal justice systems. Although, conservatively, nearly one in six women and one in 17 men in the U.S. are victims of stalking at some point in their lifetime, both the public and public safety officials may underestimate the seriousness of the crime and the relentlessness of stalkers.[2, 3]

There is clearly value in allowing all stalking victims to access the Domestic Violence Unit, which specializes in these types of complex crimes, understands the continued risk of harm that victims face, is familiar with the Violence Against Women Act (VAWA) requirements related to protection orders, and responds accordingly.[4] We strongly encourage the Committee to take all of these factors into consideration.

Additionally, we would like to work with the Committee to clarify several provisions of the bill that are vague or ambiguous:

1. "Household member" is defined in Section 16-1001 5B (line 50) as "a person with whom, in the past year, one has shared both a mutual residence and a close relationship rendering application of the statute appropriate." However, the definition doesn't explain what constitutes a "close relationship."
2. "Intimate partner" is defined in Section 16-1001 6A (line 55) as "a person to whom one is or was married; with whom one is or was in a domestic partnership; with whom one has a child in common; or with whom one is, was, or is seeking to be in a romantic, dating, or sexual relationship." In the last clause, it is unclear who is the "one," the petitioner and/or the respondent. It is also unclear if this includes a respondent who has a delusional belief that they are in a relationship with the petitioner, therefore not actually "seeking" to be in a relationship.

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[2] Sharon G. Smith et al., "National Intimate Partner and Sexual Violence Survey: 2015 Data Brief," (Atlanta, GA: Centers for Disease Control and Prevention, 2018).

[3] One in six women and one in 17 men have experienced stalking victimization at some point during their lifetime in which they felt very fearful or believed that they or someone close to them would be harmed or killed. Using a less conservative definition of stalking, which considers any amount of fear (i.e., a little fearful, somewhat fearful, or very fearful), one in four women and one in 13 men reported being a victim of stalking in their lifetime. It is important to note that no state stalking statute qualifies the level of fear required to meet the definition of stalking.

[4] VAWA includes several provisos specific to protection orders, including Full Faith and Credit; prohibiting courts from posting protection order information on the Internet that might disclose the identity or location of protected parties; and prohibiting any cost to the victim associated with the filing, issuance, registration, or service of a warrant, protection order, petition for a protection order.

3. Although Section 16-1062 of the bill would limit the ability of a plaintiff to file for an anti-stalking order to "within 90 days prior to the date of filing" that the defendant has allegedly stalked that person, there is no similar time constraint proposed for civil protection orders filed in the Domestic Violence Unit. It is also unclear whether this provision would require two or more occasions of stalking behavior to occur within the previous 90 days.[5] If the 90-day limit remains, we strongly encourage it be made clear that only one stalking act had to occur within the 90 days.
4. Although the current law on civil protection orders allows a minor who is at least 12, but less than 16 years of age, to petition for a civil protection order without a parent, guardian, custodian, or other appropriate adult acting on the minor's behalf, the bill does not have the same allowance for minors between 12 and 16 seeking an anti-stalking order. We suggest clarifying whether that is the intent of the bill or a drafting oversight.

Clarifying these provisions will help ensure that victims/survivors understand their legal rights and will encourage consistent application in court proceedings.

Finally, under current law, violation of a civil protection order is punishable as contempt and chargeable as a misdemeanor offense, and the bill proposes no change to this. However, the bill does not include parallel enforcement for a violation of an anti-stalking order; a violation would only be punishable as contempt. We believe it imperative that stalking victims have an enforcement mechanism that allows them to call law enforcement. Generally, stalkers do not desist easily and they often ignore civil and criminal actions against them. Of stalking victims who seek protective orders, 69 percent of the women and 81 percent of the men said their stalker violated the order.[6] And in approximately 21 percent of cases, violence and stalking escalate

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[5] D.C. Official Code § 22–3132: "To engage in a course of conduct" means directly or indirectly, or through one or more third persons, in person or by any means, on 2 or more occasions, to:
(A) Follow, monitor, place under surveillance, threaten, or communicate to or about another individual;
(B) Interfere with, damage, take, or unlawfully enter an individual's real or personal property or threaten or attempt to do so; or
(C) Use another individual's personal identifying information.

[6] Patricia Tjaden and Nancy Thoennes, Stalking in America: Findings from the National Violence Against Women Survey, (Washington, DC: U.S. Department of Justice, National Institute of Justice, Washington, DC. 1998).

after the protective order is issued.[7] Stalking victims must be afforded the protection of law enforcement when the stalker violates a court order. To ensure this protection for stalking victims, we recommend that the Committee change the language in the bill so that enforcement for a violation of an anti-stalking order mirrors the existing law regarding enforcement for a violation of a civil protection order.

We appreciate the Council's efforts to meet the needs of victims/survivors of domestic violence, sexual violence, stalking, and human trafficking. We applaud the many years of dedicated work by advocates seeking to improve outcomes for victims/survivors. We look forward to working with the Committee to address the questions and concerns raised today. I am happy to answer any questions you may have.

[7] B. Spitzberg, "The Tactical Topography of Stalking Victimization and Management," Trauma, Violence, and Abuse, Vol. 3, No. 4, (2002), 261-288.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
METROPOLITAN POLICE DEPARTMENT

Public Hearing on
Bill 22-0780, the "Intrafamily Offenses and Anti-Stalking Orders Amendment Act of 2018"

Testimony of
Assistant Chief Robert Contee
Metropolitan Police Department

Before the
Committee on the Judiciary and Public Safety
The Honorable Charles Allen, Chairperson

John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004
Room 123

June 21, 2018
9:30am

Good morning, Chairperson Allen, members, and staff of the Committee on the Judiciary and Public Safety. I am Assistant Chief Robert Contee of the Metropolitan Police Department (MPD). I am here to provide MPD's testimony on Bill 22-0780, the "Intrafamily Offenses and Anti-Stalking Orders Amendment Act of 2018."

MPD supports the intent of the bill to provide protections for victims/survivors of domestic violence and stalking. But we have significant reservations about the proposal in Section 5 of the bill to legislate the organizational structure and assignment of personnel within the Metropolitan Police Department (MPD). The bill would mandate the establishment of an MPD unit of at least six officers to function exclusively as process servers. We want to highlight that MPD takes this matter seriously and already has eight officers and a sergeant working on this function. However, MPD and the Executive do not support making staff decisions through legislation. It is essential that MPD maintain the authority to make decisions about its organizational structure and the allocation of personnel in order to best address evolving public safety and organizational needs. This authority allows us to best serve District residents.

We look forward to working with the Committee to address this concern, and I am happy to discuss any questions you may have on this issue.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
METROPOLITAN POLICE DEPARTMENT

July 9, 2018

The Honorable Charles Allen
Chair, Committee on the Judiciary and Public Safety
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Dear Councilmember Allen:

Please see the below responses to your request for follow up at the June 21, 2018 hearing on Bill 22-0780, the *Intrafamily Offenses and Anti-Stalking Orders Amendment Act of 2018.*

The legislation requires that the Metropolitan Police Department (MPD) establish a special unit that consists of at least six officers to exclusively serve civil process orders (CPOs). I believe, however, that the Department needs to maintain the authority to make decisions about organizational structure and allocation of resources. As Chief Contee highlighted at the hearing, MPD already has a unit of eight officers and a sergeant serving in this capacity. In fact, the Honorable Robert E. Morin, Chief Judge of the Superior Court recently recognized MPD's exemplary efforts in a letter to the Department, commending the Department for its "notable improvement in submitting accurate and complete Return of Service forms."

To provide more context regarding the CPO Unit, the following are provided in response to the specific questions you had at the Judiciary and Public Safety Committee hearing.

1. ***What is the process that the CPO Unit follows?***

   As an initial matter, it is important to clarify that not all petitioners request MPD to serve the respondent. The United States Marshals Service for the District of Columbia Superior Court (Superior Court) may serve the CPO, or petitioners may select any other competent person over 18 years of age who is not a party to the action. Some petitioners select private agents to serve process. For those who enlist MPD's assistance, we rely on our CPO Unit, whose primary function is to ensure compliance with the order and to safeguard the petitioner. To accomplish this task, a member of the CPO Unit retrieves about 15 order packets a day from the Superior Court. MPD's CPO team works every day, including holidays, two shifts a day (4:30 a.m. to 1:00 p.m. or 1:00 p.m. to 9:30 p.m.) to complete service of process on the petitioners' behalf.

   Each shift, two-member teams are assigned a police district and attempt to serve respondents, prioritized by upcoming court hearing date. To complete service, the team delivers a copy of the petition personally to the respondent or by leaving it with someone 18 years or older who

resides at the respondent's address. If an order is not served, additional attempts are made the following day. The teams make several attempts to serve, if necessary, up to a day before the court date.

While MPD makes every attempt to successfully serve the order, service can be delayed due to incomplete paperwork attained from the Superior Court. Officers also encounter building lockouts, uncooperative family members, and evasive respondents. MPD is, however, diligent in making attempts to serve and calling the respondent if the correct contact information is provided. Where the court determines the petitioner has been unable to accomplish service following a diligent effort, alternative service may be permitted by the following methods:

- MPD may deliver a copy to the individual's employer;
- The Superior Court Clerk's Office may mail a copy by registered or certified mail; or
- Any other manner which the court deems just and reasonable.

Although challenges sometimes occur, the CPO Unit works hard on behalf of each petitioner to complete this important service.

2. ***What training do members of the CPO Unit receive?***

The current CPO Unit team was trained directly by Judge Fern Flanagan Saddler of the Superior Court's Domestic Violence Unit, as well as members of the United States Attorney's Office, the District of Columbia Office of the Attorney General, and the Superior Court Clerk's Office. The approximately three-hour long training included information on the CPO process, completing return of service forms, and avoiding common mistakes.

MPD's Metropolitan Police Academy is working with the Superior Court to develop training on the CPO process for all officers. This winter, officers will complete the training in ACADIS, the Department's online learning management system. The training plan will ensure that all officers fully understand CPOs.

3. ***How does the CPO Unit notify petitioners that an order has been served?***

First, a CPO Unit member is responsible for completing a "Return of Service" form, which is included in the service packet received from the Superior Court. The responding officer that serves an order ensures that this form:

- Includes the responding officer's initials next to each document that was served;
- Includes the responding officer's badge number;
- Specifies the date and location of service;
- Indicates clearly who was served; and
- Is signed and dated.

After the form is completed in its entirety, it is returned to the Superior Court Clerk's Office during business hours. Superior Court is the primary source of information on the service

because, as highlighted in response to question 1, other entities may serve a CPO. However, some petitioners, their attorneys, or advocacy representatives do contact the Department directly to determine whether a CPO has been served. To help ensure the privacy of all parties involved, we seek to verify their information in our database by asking for the CPO number, court date, address, and other pertinent information. Where we are able to validate their information, we confirm whether or not a respondent has been served. While we are responsive to all petitioners who ask, we do not always have all information from the Superior Court on the petitioners. As such, we strongly recommend that a petitioner contact the Superior Court Clerk's Office to attain information about their particular order.

4. ***How does the Department account for the stability of the CPO Unit?***

The Department works to balance its strong interest in professional development for its employees and the relative value of stability in a particular position or unit. Serving CPOs is not particularly specialized, nor is there significant consistency in the community served that would benefit from building relationships with the same officers over time. CPO officers can apply for promotion or another position just as any officer can. Stability in the unit is not as critical as some others. If a vacancy needs to be filled, an announcement is posted internally and MPD's Human Resources Department follows its standard processes in filling the post.

We believe that the staff of eight is currently sufficient. There has been no turnover since the CPO Unit reached eight staff members in January of 2018. We do, however, underscore our need to maintain the flexibility to staff this unit and others to respond to evolving public safety concerns in the District.

I hope you found this information helpful. Please do not hesitate to contact me if you have any further questions.

Sincerely,

Peter Newsham
Chief of Police

cc: Muriel Bowser, Mayor
Kevin Donahue, Deputy City Administrator and Deputy Mayor for Public Safety and Justice

THE PUBLIC DEFENDER SERVICE
for the District of Columbia

CHAMPIONS OF LIBERTY

COMMENTS OF THE PUBLIC DEFENDER SERVICE FOR THE DISTRICT OF COLUMBIA

concerning

Intrafamily Offenses and Anti-Stalking Orders Amendment Act of 2018

Bill 22-0780
Presented by

Katerina Semyonova

before

COMMITTEE ON THE JUDICIARY AND PUBLIC SAFETY
COUNCIL OF THE DISTRICT OF COLUMBIA

Chairman Charles Allen

June 21, 2018

Avis E. Buchanan, Director
Public Defender Service
633 Indiana Avenue, N.W.
Washington, D.C. 20004
(202) 628-1200

Thank you for the opportunity to testify on Bill 22-0780, the Intrafamily Offenses and Anti-Stalking Orders Amendment Act of 2018. I am Katerina Semyonova, Special Council to the Director on Policy and Legislation at the Public Defender Service for the District of Columbia. PDS objects to several aspects of Bill 22-0780 including the provisions that would replace the District's one-year-long civil protection order (CPO) with a CPO that could last for two years and then be extended indefinitely without adequate procedural protections for respondents. PDS objects to the creation of anti-stalking orders which would foster private prosecution of criminal offenses and would duplicate existing civil remedies available to District residents. PDS also objects to allowing judges to issue orders to relinquish firearms on the basis of ex parte hearings, where respondents have no opportunity to put forth evidence or even be present.

The District currently has a functioning process through which petitioners can obtain temporary protection orders (TPOs) and civil protection orders. The typical duration of a TPO is 14 days,[1] and after a hearing, or through the consent of the parties, a judge can issue a CPO that remains in effect for one year.[2] When necessary, a party to the CPO can move the Court for an extension of the original CPO in one-year increments.[3] This means that the petitioner or the petitioner's lawyer has to make a brief appearance in court each year if the petitioner wants to seek an extension of the original CPO.

The one year duration for a CPO makes good sense given the breath of mandates and prohibitions that can be attached to a CPO. For example, through a CPO, a judge can direct the

[1] D.C. Code § 16-1004(b)(2). A TPO can also be extended in 14 day increments to allow for the completion of service or of the hearing or by the consent of the parties.

[2] D.C. Code § 16-1005(d).

[3] D.C. Code § 16-1005(d).

respondent to stay away from or have no contact with the petitioner or any other protected person or location; to participate in psychiatric or medical treatment, to vacate marital or jointly owned property, to relinquish jointly held possessions, to give up child custody or visitation, and to perform or refrain from other actions as may be appropriate for the effective resolution of the matter.[4] Violation of any of the conditions of a CPO subjects a respondent to criminal contempt and imprisonment.[5] Given the broad injunctive power conferred under the current Intrafamily Offenses Act and the possibility of criminal sanctions, the one-year duration of CPOs ensures that the mandates and prohibitions of CPOs are measured to fit the current on-the-ground reality in the lives of the petitioner and the respondent.

Bill 22-0780 changes the current one year CPO by allowing judges to issue CPOs of up to two years, which would quickly become the default, and by allowing potentially lifelong CPOs at the time an original CPO is extended. The Bill's proposed initial two year CPO and the conferral of authority on courts to grant indefinite CPOs would not be sufficiently calibrated to the needs of the parties and would risk CPOs becoming punitive rather than remedial.[6] It also makes little sense to predict the precise needs of the parties in five, ten, or even two-year increments when so much can change both in the short term and in the long term.

The proposed amendment to the existing law to allow two year and potentially life-long CPOs appears to be driven by a desire for efficiency. Efficiency concerns about having to come to court year after year on behalf of petitioners were raised by the Office of the Attorney

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[4] D.C. Code § 16-1005(d).

[5] D.C. Code § 16-1005(f) provides that violation of any temporary or final order issued under this subchapter shall be punishable as contempt and subject to the imposition of a fine or imprisonment for up to 180 days or both.

[6] *Cruz Foster v. Foster,* 597 A.2d 927, 930 (D.C. 1991) (explaining the purpose of a CPO under the Intrafamily Offenses Act is not to punish).

General in working groups surrounding this legislation. Any efficiency gained by granting long-term CPOs comes at the expense of procedural protections for respondents. There are, of course, burdens for petitioners seeking CPOs and extensions of CPOs. However, many petitioners in this process are represented by not-for-profit organizations or by the Office of the Attorney General. For lawyers, time in court is, perhaps sadly, what we all signed up for when we took these jobs. Petitioners who are represented by counsel can generally be excused from appearing in court for the extension of a CPO. For petitioners who are unrepresented, the time in court typically amounts to several hours and the paperwork entails fairly brief fill-in-the-blank documents that are available at the courthouse. In short, this process works and is not overly burdensome for petitioners.

Unlike petitioners, respondents are almost always unrepresented. Respondents who are in the position of defending against allegations of domestic abuse, only rarely receive the assistance of a legal not-for-profit and they never receive the assistance of the Office of the Attorney General.[7] Unrepresented respondents typically do not have any familiarity with the civil legal system, and frequently have educational or language barriers that impede their ability to effectively represent their own legal interests in the CPO process, where so much, including custody of children, disposition of property, and criminal liability, is at stake. The

[7] The respondent may not have an attorney at the TPO/CPO hearing even when the respondent has an attorney in a criminal case related to the domestic abuse that is the reason put forth for a TPO/CPO. The Legal Ethics Committee of the D.C. Bar issued an opinion in June 2017 about the practice of attorneys appointed by the court to represent defendants in criminal matters refusing to enter an appearance in the CPO matter. Anecdotally, because respondents are not entitled under the Constitution to representation in CPO hearings, attorneys appointed in criminal matters pursuant to the Criminal Justice Act do not get paid for court appearances in CPO matters. The Legal Ethics Opinion addresses the practice of some CJA attorneys attempting to advise their clients, for example, on their 5th Amendment rights and how any statements they might make in the CPO hearing might impact their criminal case, while not actually appearing in the case. The Legal Ethics Opinion did not find it unethical for an attorney not to enter his or her appearance in the CPO matter despite the nexus between the criminal case and the CPO matter. Therefore, this Committee can expect that CPO respondents will continue to be largely unrepresented in these hearings. See DC Bar LEO 373. https://www.dcbar.org/bar-resources/legal-ethics/opinions/Ethics-Opinion-373.cfm

current one-year CPO appropriately strikes the balance between the immediate needs of the petitioner and the rights of the respondent. The current system ensures an annual review of the CPO for unrepresented respondents and ensures that people are not unreasonably subjected to criminal liability years after the event that caused the initial court intervention. PDS opposes any amendment that would allow judges to impose a CPO on a respondent for longer than one year.

Bill 22-0780 also provides inadequate procedural protections for what could now be a five or ten or twenty-year CPO. As drafted, Bill 22-0780 would allow a judge to extend a CPO for any term the judge deems appropriate, on the papers, without hearing argument or testimony. In fact, a life-long CPO can be imposed after an initial two year CPO simply because a prior CPO had been obtained by the same petitioner against the same respondent. Any prior evidentiary hearing on the original CPO cannot be used as a stand-in for an evidentiary hearing on why a long term extension should be granted. The lack of process is particularly grave for the large number of individuals who consent to CPOs. Many CPOs are issued with the consent of the parties and are facilitated by a court mediator who arranges the agreement on the morning of the respondent's first court appearance. In consent CPOs, neither party admits wrongdoing and the parties agree to conditions that would be in effect for one year. Under Bill 22-0780, a party to a consent CPO can move to indefinitely extend the CPO without there ever having been an evidentiary hearing on the merits of the original CPO. Thus, an unrepresented respondent who consents to the initial CPO could now face a lifetime CPO, containing an array of burdensome requirements and prohibitions, without ever having his or her day in court. The Council should not allow this trammeling of individual rights in the name of efficiency.

Bill 22-0780 also creates, for the first time, a system of granting anti-stalking orders where a judge finds that an unrepresented respondent committed the crime of stalking[8] under the low preponderance of the evidence standard. Stalking should not be singled out for prosecution through a new civil enforcement scheme. Stalking is a criminal offense prosecuted by the Office of the United States Attorney.[9] There is no reason to believe that prosecutors fail to take the crime of stalking seriously or fail to charge it where there is proof of the crime. Where there is a pending prosecution for stalking or another related offense and the defendant is released, the defendant's conditions of release would include a stay away order from the alleged victim of the stalking.[10] Violation of that stay away order would subject the defendant to revocation of his or her conditions of release, contempt charges, and, potentially, to additional stalking charges.[11] Creating a civil statutory mechanism for the private enforcement of a particular criminal offense is anathema to our justice system, which delegates exclusively to prosecutors the authority to prosecute criminal offenses.

To the extent that the Council believes that there needs to be a way for individuals to seek civil remedies for criminal conduct that is not being adequately addressed by prosecutors, it already exists. Individuals alleging harm caused by others can seek temporary restraining

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[8] D.C. Code § 22-3133 (stalking).

[9] Pursuant to D.C. Code § 22-3134, the crime of stalking is punishable by fine and imprisonment for a period of not more than 12 months. In some instances the punishment for stalking is greater. Stalking is punishable by fine and imprisonment for not more than 5 years if the defendant was under an order prohibiting contact with the stalked individual, had a prior conviction in any jurisdiction for stalking within the previous 10 years, was more than 4 years older than the stalked individual and the stalked individual was under 18, or if the defendant caused more than $2,500 in financial injury. Stalking is punishable by fine and imprisonment for not more than 10 years if the defendant has two or more prior convictions for stalking, at least one of which was for a jury demandable offense. Fine amounts are established by the statutory maximum for the offense in D.C. Code § 22-3571.01.

[10] D.C. Code § 23-1321(c)(1)(B)(iv)-(v).

[11] D.C. Code 23-1329(a)(revocation of release conditions) and D.C. Code 23-1329(c) (contempt prosecution for violation of conditions of release).

orders (TROs), preliminary injunctions, and civil injunctive relief. Under an already established process, TROs may be granted for a 14-day period during which the judge can issue a "no contact" order or other appropriate remedy.[12] Preliminary injunctions are not time constrained and can last until a ruling on the merits of a claim of stalking.[13] Judges in civil court have the structure and capacity to resolve issues of stalking or other wrongful conduct. This existing process can and should be employed in instances of alleged stalking to ensure fair consideration of the issues and a fair process for all parties.

But even if the Council believes that some separate civil statute should be created for stalking, Bill 22-0780 goes too far. Bill 22-0780 would allow a broad range of sanctions against a respondent, sanctions that are not commensurate with the narrow purpose of preventing stalking. For instance, Bill 22-0780 would allow a judge, after finding the commission of the crime of stalking by a preponderance of the evidence, to order the relinquishment of jointly held property. The division of property should be addressed by a general civil court. The proposed anti-stalking section also contains the same provisions that PDS objects to with respect to CPOs, including the issuance of two-year anti-stalking orders and the potential renewal of anti-stalking orders for limitless time periods with scant procedural protections.

Finally, PDS also opposes the provisions in Bill 22-0780 that would change the existing law surrounding temporary protective orders (TPOs) by explicitly allowing judges hearing petitions for TPOs to order that respondents relinquish all firearms in their possession. Petitions for TPOs are considered in ex parte hearings, meaning hearings where only one side, the petitioner, is present. The respondent has no notice of the TPO hearing, no right to appear, and

[12] Superior Court Rules of Civil Procedure, Rule 65.

[13] Superior Court Rules of Civil Procedure, Rule 65.

no right to challenge the veracity of the claims presented by the petitioner.[14] To grant a TPO, the judge need only find that "the safety or welfare of the petitioner or a household member is immediately endangered by the respondent."[15] There is no statutorily prescribed standard of proof or required findings regarding the credibility of the petitioner. Given the minimal process required to grant a TPO, it is not clear that orders to relinquish firearms based on the District's ex parte TPO statute would survive a Second Amendment challenge. Further, since a CPO hearing with notice and an opportunity for the respondent to be heard follows not long after the grant of a TPO, any order to relinquish firearms should be considered at the CPO hearing rather than at the TPO hearing.

Thank you for the opportunity to present this testimony. As always, PDS is available to the Council for further questions and concerns regarding these bills.

[14] D.C. Code § 16-1004.

[15] D.C. Code § 16-1004(b)(1).

Statement of Mina Q. Malik
Deputy Attorney General, Public Safety Division
Office of the Attorney General

Before the

The Committee on Judiciary and Public Safety
The Honorable Charles Allen, Chair

Public Oversight Hearing
on
Bill 22-780, the "Intrafamily Offenses and Anti-Stalking Orders Amendment Act of 2018"

June 21, 2018
9:30 am
Room 123
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, District of Columbia 20004

Good morning Chairman Allen and members of the Committee on Judiciary and Public Safety. I am Mina Malik, Deputy Attorney General for the Public Safety Division of the Office of the Attorney General for the District of Columbia (OAG), and with me today is Janese Bechtol, Chief of the Domestic Violence Section. We are here to express the Attorney General's wholehearted and enthusiastic support for Bill 22-780, the "Intrafamily Offenses and Anti-Stalking Orders Amendment Act of 2018."

As you know, the Office of the Attorney General has been an integral partner in the city's legal response to domestic violence since the first Intrafamily Offenses Act passed in 1970. Today, OAG represents domestic violence victims in obtaining civil protection orders, prosecutes violations of civil protection orders, helps staff the city's two Domestic Violence Intake Centers located at Superior Court of the District of Columbia ("D.C. Superior Court") and United Medical Center in Southeast, and participates in a variety of coordinated efforts addressing issues of domestic violence. We are proud to be an active participant in the multi-agency working group that began meeting regularly in 2015 to draft the proposal that became the bill under consideration today.

My testimony will address the two most substantial changes to existing law included in this bill: (1) reducing eligibility for civil protection orders and creating

anti-stalking orders; and (2) expanding the available timelines for temporary protection orders and civil protection orders.

I. NEED TO REDUCE CIVIL PROTECTION ORDER ELIGIBILITY AND CREATE ANTI-STALKING ORDERS

The need to reduce eligibility for civil protection orders and create anti-stalking orders is two-fold. First, the reduction is needed to allow the D.C. Superior Court Domestic Violence Unit to fully focus on its specialized purpose of serving domestic violence victims. Second, once removed from the Intrafamily Offenses Act, stalking victims need an alternative streamlined, enforceable process that currently does not exist.

A. The Domestic Violence Unit of D.C. Superior Court

The Domestic Violence Unit of D.C. Superior Court was established in November 1996, as part of the District's Domestic Violence Plan. The Plan grew out of a multi-year coordinated effort by representatives of all stakeholders in the system. The resulting Plan concluded:

> A key element of the Plan is the creation of the Domestic Violence Project of the D.C. Superior Court, a unified domestic violence court that processes both noncriminal and criminal cases in which domestic violence is the underlying issue. The purposes for creating a unified case-processing system for domestic violence cases are to promote specialization among judges, prosecutors, defense attorneys, and other system components; to encourage the handling of each case in the manner most appropriate to the individual circumstances of the case; to impose offender accountability through the imposition of a variety of sanctions including jail and jail treatment, in appropriate cases, and monitored treatment programs for those offenders who enter the system early in the cycle of violence; to promote

> maximum allocation of scarce resources; and to provide judicial review and monitoring of each case, upon disposition, through a coordinated approach to ensure that the judge who has the best understanding of the history of violence between the involved parties will monitor the case.

District of Columbia Domestic Violence Plan, p.8 (Dec. 12, 1995). Given that the types of relationships included in the Intrafamily Offenses Act, and therefore heard in the Domestic Violence Unit, have expanded over the years, fulfilling these purposes has become more difficult.

In 2007, 3863 petitions for civil protection orders were filed in the Unit. At the end of 2017, that number was 5973 – an increase of over 2000 cases. However, the number of judges hearing these cases has remained the same. As a result, the judges' ability to give domestic violence victims the attention they need and deserve, as well as the victims' ability to have their cases resolved quickly, have suffered. Based on my office's review of case filings, approximately 15%, or nearly 900 of 2017's cases, fall into the categories of non-domestic violence cases this bill seeks to remove from the Intrafamily Offenses Act. Such cases also involve contested hearings and multiple filings at rates higher than their domestic violence counterparts, thus squandering even more of the Unit's specialized resources. Removal of these non-domestic violence cases likely will allow our critical domestic violence resources to be used in a more efficient and effective manner.

B. Mismatch of Common Partner, Roommates, and Stalking Victims with the Specialized Expertise of the Domestic Violence Unit

The relationships defined as intrafamily offenses, and therefore heard in the Domestic Violence Unit, have broadened substantially since 1970, and several of those relationships – common partners, roommates, and certain types of stalking – bear little in common with the intimate partner and family violence traditionally considered domestic violence.

1. Common Partners

Common partners were added to the statute over the objection of the domestic violence community in 2006. "Common partner" is the shorthand term used to refer to people who currently, or have previously, been in an intimate relationship with the same third person. They were added to the statute by one subsection of a 22-Title Omnibus Public Safety Act. When domestic violence stakeholders were consulted late in the legislative process,[1] they opposed adding common partners, but failed to gain any traction.[2]

At the same time, the domestic violence community had been drafting its own comprehensive overhaul of the Intrafamily Offenses Act. That bill[3] was originally introduced in September 2006, and went into effect in 2009.[4] The

[1] The bill was first presented at a D.C. Coalition Against Domestic Violence meeting on May 10, 2005, and the hearing on the bill was May 31, 2005.
[2] *See* Report on Bill16-247, the "Omnibus Public Safety Act of 2006," Statement of Larisa Kofman, Policy and Community Organizing Advisor, D.C. Coalition Against Domestic Violence (April 28, 2006)
[3] *Intrafamily Offenses Amendment Act of 2006*, Bill 18-899, 53 D.C. Reg. 7832 (Sept. 29, 2006)
[4] *Intrafamily Offenses Act of 2008*, D.C. Law 17-368, 56 D.C. Reg. 1338 (Feb. 13, 2009)

primary changes of the 2009 overhaul were updating archaic language and references contained in the statute that no longer reflected actual practice; creating direct access to court protection for teen victims of intimate partner violence; adding protection for all victims of sexual assault regardless of the underlying relationship; making the court's authority to extend temporary protection orders explicit; adding relinquishment of firearms as an explicit remedy; and adding a new section addressing jurisdiction. Considering how recent the criminal justice effort to add common partners had been, the domestic violence community did not seek to remove common partners from the statute in the overhaul, but did ensure that they and roommates were identified separately in the statute[5] to allow legal distinctions between them and victims of family or intimate partner violence.

Now, with 12 years of experience of having common partner cases in the Domestic Violence Unit at D.C. Superior Court, the domestic violence community continues to believe that these cases do not belong in the Domestic Violence Unit, where they consume a disproportionate amount of court time and attention but have no need for, and therefore do not benefit from, the specialized training and focus for which the Unit was developed. In the clear majority of common partner cases, the dispute is primarily between the parties, and the intimate partner in common does not pose a threat to either party.

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[5] *See* D.C. Code § 16-1001(6).

2. Roommates

The bill will also limit the eligibility for civil protection orders of people whose only relationship is sharing a mutual residence. To seek protection, such people will need to demonstrate that they have both shared a mutual residence within the past year and have "a close relationship rendering application of the statute appropriate." This change will take the statute back to its purpose of combatting domestic violence and eliminate abuse of the statute by landlords seeking to evict tenants without going through landlord-tenant court.

For the statute's first 25 years, it contained the proposed limitation. From 1970 to 1982, the statute included those who cohabited in a "close relationship" rendering application of the statute appropriate.[6] In 1982, the language was changed to those who shared a mutual residence within the past year and an "intimate relationship" rendering application of the statute appropriate.[7] In 1995, when the Council added coverage for dating violence victims, it also removed the intimate relationship language for people who lived together.[8] Over time, that removal has come to be used as a tool for landlords[9] to attempt to remove unwanted tenants without proceeding through landlord-tenant court and for

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[6] *District of Columbia Court Reform and Criminal Procedure Act of 1970*, Pub. L. No. 91-358, § 131, 84 Stat. 546 (July 29, 1970).
[7] *Proceedings Regarding Intrafamily Offenses Amendment Act of 1982,* D.C. Law 4-144, 29 D.C. Reg. 3131 (Sept. 14, 1982).
[8] *Domestic Violence in Romantic Relationships Act of 1994*, D.C. Law 10-237, 42 D.C. Reg. 36 (March 21, 1995).
[9] *See e.g. Caldwell v. Tanner*, D.C. Super. Ct. Case No. 2015 CPO 3061; *Caldwell v. Wynn*, D.C. Sup. Ct. Case No. 2015 CPO 3062.

homeless shelter residents to seek exclusion of other residents. Such efforts require none of the Domestic Violence Unit's specialized training and resources and should not provide an end run around existing procedures for such cases.

3. Stalking

Finally, the bill will create an alternative process for stalking victims who have no underlying covered relationship with the offender. Unlike some other jurisdictions, the District does not have a separate harassment and stalking law.[10] As a result, the breadth of cases captured by our stalking law[11] is vast – from squabbling neighbors to romantically fixated predators. The bill seeks to create an alternative process for any of those cases that do not involve the pursuit of a romantic relationship. Such a practice is consistent with other jurisdictions that have separate orders for stalking.[12] In continuing conversations about the proposal submitted to the Council, the working group also suggests improvements to section 16-1001(6A) of the bill to ensure it appropriately captures stalking cases that involve the pursuit of, or a delusional belief in, a romantic relationship. Our proposed language is included in the attachment.

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[10] *See e.g.* Conn. Gen. Stat. § 53a-183; Del. Code Ann. tit. 11, § 131; Md. Code Ann. Crim. Law § 3-803; N.J. Stat. Ann. § 2C:33-4; N.Y. Penal Law § 240.26; 18 Pa. Cons. Stat. § 2709.

[11] D.C. Code §§ 22-3132, 3133

[12] *See e.g.* Fla. Stat. § 784.0485; 740 Ill. Comp. Stat. 21/105; Haw. Rev. Stat. § 604-10.5; Mass. Gen. Laws ch. 258E, § 3; Me. Rev. Stat. tit. 5, § 4655; Md. Code Ann., Cts. & Jud. Proc. § 3-1505; Mich. Comp. Laws § 600.2950a; Minn. Stat. § 609.748; Or. Rev. Stat. § 163.738; Va. Code Ann. § 19.2-152.10; Wash. Rev. Code § 7.92.130.

Additionally, allowing all stalking victims to be eligible for civil protection orders would thwart any effort to remove common partner cases, because the basis for most common partner cases are social media battles and telephone interactions that qualify as stalking under our statute.

Having reviewed statutes from other jurisdictions and in deference to the concerns of D.C. Superior Court of the District of Columbia, the bill contains a 90-day time limit for filing for an anti-stalking order. Upon further review of the language, however, we realize the 90-day language could be misconstrued to require two occasions of the stalking course of conduct (a completed act of stalking) to occur within the previous 90 days. In recognition of the reality that stalking patterns can occur over a substantial period with gaps in between, we have attached proposed clarifying language that only one occasion of a stalking course of conduct need occur within the previous 90 days.

C. The Existing Restraining Order Process is Not Sufficient to Fulfill the Need for Stalking Orders

One of the primary reasons the Intrafamily Offenses Act has come to encompass so many types of cases that have no resemblance to domestic violence is because, unlike other jurisdictions, the District has no equally effective, alternative system for providing immediate and enforceable court protection. This bill would change that. Without this new process, the only option for stalking victims no longer eligible for civil protection orders would be to file for a

restraining order under a common law cause of action, an option already exercised by many stalking victims when they have no domestic relationship with the stalker out of confusion about their eligibility for civil protection orders. However, unlike temporary protection orders, temporary restraining orders have no requirement that they be heard immediately and are regularly heard for the first time weeks after filing, thus offering no protection in emergency situations.

Even when a victim succeeds in obtaining a restraining order, effective enforcement is elusive. While under both its inherent power and D.C. Code § 11-944, the D.C. Superior Court has the authority to punish for disobedience of its orders, practical use of that authority requires the victim to notify the court and request subsequent court action. There is typically no immediate police protection if someone comes to a victim's home in violation of a restraining order. By mirroring the misdemeanor violation language from the civil protection order statute, the bill will ensure stalking victims maintain the same enforcement protections currently available to them under civil protection orders.

II. THE NEED TO EXPAND THE AVAILABLE TIMELINES FOR TEMPORARY PROTECTION ORDERS AND CIVIL PROTECTION ORDERS

The Office of the Attorney General also strongly supports extending the current timelines for civil protection orders (CPOs) and temporary protection orders (TPOs).

The D.C. Superior Court can currently issue a CPO for a period of up to one year. After one year, a victim may file for a one-year extension of the CPO, and must apply for additional one-year extensions thereafter. The majority of jurisdictions in this country provide for a longer period of protection, and even among the states with a one-year period for the initial order, seven allow for longer extension periods when appropriate. The bill would expand that initial period to up to two years, which would put the duration of CPOs in the District in line with Illinois, Indiana, Maine, Minnesota, New York, Texas, and Virginia, but still shorter than 22 other states, such as Pennsylvania (three years) and California (five years), and 12 states that provide no statutory time limit.

The option of an order that covers a longer period of time is especially important for parties with related domestic relations matters. To the extent either party seeks a permanent custody and visitation order, such proceedings regularly last more than a year and having the protection order in place during that time is extremely valuable. Similarly, the separation imposed by a civil protection order allows a victim to file for divorce after one year; however, to have the civil protection order expire just as the victim qualifies to file for divorce can place the victim at increased risk if the victim chooses to file for divorce.[13]

[13] *See* Janice Roehl, Ph.D, et al., Intimate Partner Violence Risk Assessment Validation Study, p. 10 (2005) available at https://www.ncjrs.gov/pdffiles1/nij/grants/209731.pdf

While the current statute is silent on the length of time the court can extend a CPO, most judges interpret the length as an additional year at a time. Forcing victims to return to court every year when the court has good cause to believe a longer period is in the victim's best interest makes no sense. OAG has worked on multiple cases over the years that have required multiple extensions due to ongoing violations. Indeed, one case resulted in a CPO being in place for 12 years. In another case that spanned nearly nine years, it was obvious the respondent used litigation as a way to maintain contact with the petitioner. Still, for each extension, the petitioner had to endure multiple days of trial to get just one more year of protection because the court did not believe it had the authority to grant a longer period. This bill will correct that injustice and ensure that, when appropriate based on the case history, the court will have the discretion to grant longer periods of extended protection.

The bill will similarly give the court the ability to extend TPOs as needed to appropriately resolve a case. The explicit ability to extend TPOs was first added to the statute in the 2009 overhaul and allows for extensions beyond 14 days with the consent of both parties. While helpful, the unintended side effect of this language is that if a case needs to be continued for more than 14 days for any number of legitimate reasons – court availability, party availability, witness availability, trailing a related case – the court currently has no discretion to extend the TPO for

the full time without the respondent's consent and, by withholding consent, the respondent can require all the parties to return to court on an interim date(s) just to extend the TPO.

The current statute also fails to allow for different treatment of pre-service and post-service TPO extensions. If a petitioner needs an extension longer than 14 days to effectuate service, the court is currently unable to grant a TPO extension for that period because the respondent is obviously unable to consent, even though without service he has suffered no prejudice since he is not constrained by the TPO until he is served with it. This again requires the petitioner to return to court for TPO extensions when, under the circumstances, the court may otherwise have been willing to grant a longer continuance. Giving the court the discretion not to schedule unnecessary hearings will conserve scarce judicial time and resources without compromising the expeditious nature of the proceedings.

III. CONCLUSION

The Intrafamily Offenses and Anti-Stalking Orders Amendment Act of 2018 is a critical bill that will vastly improve the experience of domestic violence victims in obtaining civil protection orders and create an efficient, enforceable process for stalking victims to obtain comparable protections. The bill has my office's wholehearted support. In reviewing the bill, the Office of the Attorney General noticed the need for several technical corrections and two changes from

the draft created by the community. OAG's response to those changes are noted and explained in the attachment, along with suggested changes for those pursuing a romantic relationship and for the 90-day stalking requirement.

I thank you for your time. My colleague, Janese Bechtol, and I are happy to answer any questions you may have.

ATTACHMENT

Suggested change to Intimate Partner Definition

Current bill
16-1001 (6A) "Intimate partner" means a person to whom one is or was married; with whom one is or was in a domestic partnership; with whom one has a child in common; or with whom one is, was, or is seeking to be in a romantic, dating, or sexual relationship.

Suggested change
16-1001 (6A) "Intimate partner" means a person to whom one is or was married; with whom one is or was in a domestic partnership; with whom one has a child in common; or with whom one is or was in a romantic, dating, or sexual relationship. For purposes of this chapter, "intimate partner" also includes a person who is or has been pursuing such a relationship with the person filing or claims such a relationship exists or existed with the person filing.

Rationale
As drafted the section could be interpreted that the petitioner had to be seeking a relationship with the respondent instead of the other way around. It also does not necessarily cover respondents who are delusional in their belief that there already is a relationship. This change should fix both of those problems.

Suggested changes to 16-1062(a) & (b)

16-1062(a) A person may file a complaint for an anti-stalking order and a request for an interim anti-stalking order in the Civil Division against another person who has allegedly stalked that person, with at least one occasion of the course of conduct occurring within 90 days prior to the date of filing~~, has allegedly stalked that person~~. A minor's parent, guardian, or custodian, or other appropriate adult may file a complaint for an anti-stalking order on the minor's behalf. A minor who is 16 years of age or older may file a complaint for an anti-stalking order on the minor's own behalf.

16-1063(b) If, after a hearing, the judicial officer finds by a preponderance of the evidence that ~~within 90 days prior to the complaint being filed,~~ the defendant stalked the plaintiff and at least one occasion of the course of conduct occurred within the 90 days prior to filing, or after receiving the parties' consent, a judicial officer may issue a final anti-stalking order ~~that:~~. In determining the appropriate remedies for the order, the court shall consider the totality of the circumstances surrounding the allegations. Appropriate remedies may include:

Rationale:
Because the statutory definition of stalking requires two or more occasions, we realized that as written, the statute could be interpreted to require two or more occasions in the previous 90 days which was not the drafters' intent. By tracking the language of the stalking statute, the suggest change should eliminate the possibility of this interpretation.

The bill omits the final sentence above which was included in the drafters' proposal. We urge the Council to include the language which is extremely important in stalking cases to understand how seemingly innocent actions, when combined, become menacing.

Suggested Addition of §16-1063(f)

Suggested addition
§ 16-1063(f) Any person who violates any interim or final order issued under this subchapter shall be chargeable with a misdemeanor and upon conviction shall be punished by a fine of not more than the amount set forth in [§ 22-3571.01] or by imprisonment for not more than 180 days, or both.

Rationale:
The bill omits the misdemeanor crime section from anti-stalking orders that currently exists for stalking victims under civil protection orders. Taking this enforcement mechanism away from stalking victims would remove one of the two factors (expediency and enforceability) that would make anti-stalking orders effective and essentially equivalent to civil protection orders. Without the section, the victim in the community would have no meaningful protection.

Technical Corrections

- The numbering in § 16-1001 needs to be corrected and § 16-1001(9) was accidentally not deleted.

- § 16-1005(h) refers to subsections (f) and (g). It should be (f), (g) and (g-1).

- Change in § 16-1005(d-1) from rescind to vacate was not changed in § 16-1005(e) which still contains rescission.

  Suggested change
  16-1005(e) Any final order issued pursuant to this section and any order granting or denying a motion to extend, modify, or vacate such an order shall be appealable.

- § 16-1063(h) refers to subsection (g). It should be (f) and (g).

D. Michael Bennett Testimony- June 21, 2018 Confirmation Hearing-DC BOE Chair

Good Afternoon Councilman Allen and other Council Members. I appreciate the opportunity to be here before you as Mayor Bowser's nominee to continue to Chair the DC Board of Elections. I will spend much of my time in this testimony talking about the great work of the men and women of the Board of Elections and the Office of Campaign Finance since I began just over 2 years ago and our plans for the future.

My first order of business when I was confirmed as DC BOE Chair in April 2016 was the appointment of a permanent Executive Director of the BOE. After a national search we selected Mrs. Alice Miller. She was by far the most qualified candidate, hands down. She came with national expertise and local experience.

Once we chose a permanent BOE leader she got to work by implementing electronic poll pads for faster check-in at the voting precincts. The BOE has also successfully deployed Esign signature collection process for nominating and initiative petitions, assisted in obtaining funding for the purchase of a new voter registration system, and worked to ensure that the precincts are accessible to voters with special needs.

The focus on accessibility led to developing a program which employs ADA (Americans with Disabilities Act) Compliance Assistants. These election assistants provide support to the Precinct Captains the day before the election with precinct set-up, (posting signs, setting up voting equipment with a focus toward accessibility needs) and on Election Day they visit various polling sites to ensure that the precincts are in compliance with all accessibility requirements. Further, overall precinct accessibility has been increased. The Board also has a contract with Democracy Live to provide an accessible voter guide on the website for

voters with disabilities. The contract also provided for the online access of voters' sample ballot in an accessible format. This allows voters easy access to their specific ballot via the website, simply by inputting the name and date of birth of the voter. Once that information is supplied through the website; the ballot will be uploaded into the site and can be "voted" and used as a guide by the voter while voting. Voters have been pleased with this progress.

The BOE has also increased public outreach to returning citizens that are eligible voters. This has taken on a significant part of the Board's ongoing responsibility to ensure that all qualified voters are provided with the information needed to participate in the election process. We have supported and encouraged visits to prisons, halfway facilities, etc. The Board will once again have voters processed at the DC jail for the 2018 elections for both the Primary and the General Elections.

Security of our information systems continues to be an important priority for the agency. As such, the BOE has worked with the Department of Homeland Security, FBI, National Security Agency, and other like entities to ensure that the Board's systems meet cybersecurity standards. We participate in periodic scans of all BOE public interface systems. BOE has worked with DHS to perform risk and vulnerability assessments for our systems to ensure readiness for Election Day operation. The agency has been diligent with obtaining updates on the vulnerability scanning of the Board's systems. Since the scanning has been in place, the systems have not experienced any threat to its security.

We have achieved the longtime desire of locating both the BOE and the OCF in one central location. It is 1015 Half St. SE. As of May 14th, OCF has co-located in the same building with the BOE which relocated its offices at the beginning of the calendar year 2018. ***This is a major accomplishment***. Both agencies have responsibilities that rely on the other and require coordination from members of the public to be successful with meeting various associated filing deadlines. The co-

location of these agencies provides a user-friendly path for the public to have easy access to both agencies simultaneously.

Over the next four to six years I would like to see continued modernization of the BOE by leveraging technology to include all aspects of voter registration and election administration. I would also like to see us institute online training for poll workers, as a refresher option once classroom instructions have been completed. The BOE would also like to provide a process for online filing of nominating petitions for ballot access, and fully digitize all of the voter registration records.

Hopefully we will soon be able to expand the number of Early Voting Centers and provide additional electronic equipment at the precincts on Election Day.

The BOE intends to work to increase the number of student registered voters by targeting local public, private and charter schools. This effort would be combined with an outreach approach that would ultimately encourage students to participate in election day operations and help them understand the importance of civic engagement.

I am also excited about the implementation of a new voter registration system, which is currently pending procurement. Once the new system is in place, we plan to explore the Board's ability to offer online filing for nominating petitions for ballot access. Lastly, we would like to see the installation of voter registration tablets at the voter registration agencies. These tablets would be uploaded with the voter registration data and could increase voter registration and improve data accuracy.

Office of Campaign Finance (OCF)

Regarding the Office of Campaign Finance, there are ongoing upgrades to the OCF electronic information systems to make the audit process even better. The business of the OCF is very data driven and requires the

ability to manipulate data in many different ways to properly track candidate compliance. Thus, robust information system capability is essential.

The accurate and complete disclosure of the campaign operations of candidates and committees is intimately tied to the responsibility of the Board of Elections to ensure the integrity of the election process as a whole. Most recently, the Office of Campaign Finance expanded its Educational Program to specifically focus on the Candidates for Advisory Neighborhood Commission Member. The Board of Elections conducted, at the November 8, 2016 General Election, the election of the candidates for the Office of Member of an Advisory Neighborhood Commission (ANC). There were approximately 443 active candidates in this Election, and on November 18, 2016, the Board certified 276 candidates as the winners in their respective Single Member Districts. The District of Columbia Municipal Regulations, at Chapter 30, "Elections and Ethics", Section 3002.6, require that each ANC Candidate, regardless of the outcome of the election, win or lose, file the Summary Financial Statement of Candidate for the Office of Member of an Advisory Neighborhood Commission (ANC)OCF Form 18), no later than sixty (60) days after the certification of the election results. To better address the reporting responsibilities of the ANC Candidate during the 2016 Election Cycle, the Office of Campaign Finance offered comprehensive training dedicated solely to the ANC Candidate, and invited the ANC candidates in all eight (8) Wards. OCF also developed and introduced the narrated online training module, "Understanding the Rules of the Game: A Campaign Finance Playbook for Advisory Neighborhood Commission (ANC) Candidates". As the result of these efforts, 425 of the 450 required filers (94%) submitted the ANC Financial Summary Statement to the Office of Campaign Finance, and all Statements were e-filed.

The OCF Audit Procedures were revised to provide for the Desk Review of the ANC Summary Financial Statement (OCF Form 18) to ensure the accuracy of the candidate's financial reporting. The Audit Division conducted the desk review of 428 Summary Financial Statements of ANC Candidates.

Second, the Agency expanded the Educational Program to introduce the Webinar as a live web-based training tool to address the reporting requirements of the Campaign Finance Act. At the end of the Webinar presentation, the public is invited to ask questions.

Third, the OCF Standard Operating Procedures were revised to incorporate a process for the review of the contributions made by Business Contributors to better monitor compliance with the Campaign Finance Act, as amended. Under the Act, a business entity making a contribution and all of its affiliated entities share the contribution limits. (The "business contributor" must identify for a committee, when a contribution is made, any of its affiliated entities that have also contributed to the committee and certify that no affiliated entities have contributed an amount that when aggregated with the contribution would exceed the limits. The committee must then disclose on their financial reports the contribution by the business contributor and the identity of each of its affiliated entities that have also contributed to the committee.)

(Following each deadline for the filing of Reports of Receipts and Expenditures, the data of at least fifty (50) business contributors from each committee or Program filing is reviewed to verify the accuracy of the disclosure of any associated affiliated entities. The review relies on the records and registration documents of the District of Columbia Department of Consumer and Regulatory Affairs, the current edition of America's Corporate Families Directory, business reference sources, and any other additional resources, including the internet that may identify the affiliated entities which are connected to Business Contributors. As

of this date, because the overall number of business contributors to committees has been low, the Office of Campaign Finance has been able to research each and every business contribution and has found few instances of noncompliance with the Campaign finance Act.)

The Office of Campaign Finance continues to successfully manage the Mandatory Training Program, introduced in February 2015, for new candidates and the treasurer of each newly organized political committee, political action committee, independent expenditure committee, and the Constituent Service and Statehood Fund Programs. The Program is designed to ensure compliance with the contribution limits, the prohibitions, and the reporting requirements of the Campaign Finance Act. During FY 17, the OCF achieved 100% compliance with the legislative mandate for newly registered candidates and the treasurers of newly organized committees to attend the training.

The 100% compliance rate assured the residents of the District of Columbia that the candidates for public office have participated in and received training to specifically address their obligations and duties under the Campaign Finance laws and made a commitment to comply with those laws. The 100% compliance rate also promotes voluntary compliance with the Campaign Finance Laws as demonstrated through the 99.7% compliance rate achieved for the filing of Reports of Receipts and Expenditures by newly registered candidates and treasurers who attended the mandatory training.

In addition, the Office achieved a 99.7% compliance rate with the legislative mandate to file all financial reports online at the OCF Website. 1026 of the 1028 total reports received during FY 17 were filed electronically. The submission of financial reports online provides the public with real time access to the financial transactions reported by candidates, committees, and the Constituent Service and Statehood Fund Programs.

Lastly, the OCF has enhanced its E-Filing System to enable committees and Constituent Service Programs to use the Excel Application Software to file their respective Reports of Receipts and Expenditures. This feature allows the filer of financial reports (OCF Forms 10 and 16) to import contributions (Schedule A) and expenditures (Schedule B) records from pre-defined Excel template files. The filer may use the OCF formatted excel spreadsheet to enter the committee's information for Schedules A and B, and then upload the spreadsheet to automatically populate the Schedules.

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With the enactment of D.C. Law 22-94, the "Fair Elections Amendment Act of 2018", effective May 5, 2018, the major efforts of the Office of Campaign Finance going forward will be directed to ensure that the Agency meets and surpasses the expectations of the Act over the 2020 and 2022 Election Cycles. We know that we have a short window within which to implement the requirements of the Act and to prepare for the candidates who may seek certification as participating candidates in the Program during the 2020 Election Cycle and OCF will be ready. Prior to the applicability date of November 7, 2018, the Agency is scheduled to meet with their campaign finance counterparts in Maryland and New York during June 2018 to discuss their experiences with public funding programs. These meetings will present the opportunity for the Office to determine what business practices have worked well for these jurisdictions, to observe their audit and electronic filing systems, and to review how their programs are staffed and organized. We will be actively engaged with the Planning Committee to be established by the OCF which will develop policies to support increased voter participation through community outreach, using technology to provide greater transparency and disclosure of campaign operations. We plan to administer the debate requirement by creating partnerships with civic and media sponsors and creating services to assist candidates and treasurers with compliance. Members of the Fair Elections Coalition and private residents of the District of Columbia who were strong advocates

of the effort to advance the enactment of the Bill before the Council will be invited to participate. Of course, the OCF will design an efiling system and audit process unique to the requirements of the Fair Elections Program and will commit to the comprehensive review of its regulations, the OCF Website and Educational Program, and the revision of its organizational staffing and functional charts, and position descriptions to include the Program and the new positions assigned thereunder.

We will be quite busy going forward.

Respectfully Submitted:

D. Michael Bennett